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# **Child Protection in Court: Outcomes for Children**

**Establishing outcomes of care proceedings for  
children before and after care proceedings reform**

**(Report of ESRC ES/M008541/1)**

**Judith Masson and Jonathan Dickens**

**with**

**Ludivine Garside, Kay Bader and Julie Young**

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**School of Law, University of Bristol**

**Centre for Research on Children and Families,**

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## Contents

<b>Acknowledgements</b>	<b>iii</b>
<b>Authors</b>	<b>v</b>
<b>Table of Contents</b>	<b>vi</b>
<b>List of Figures</b>	<b>x</b>
<b>List of Tables</b>	<b>xi</b>
<b>Acronyms</b>	<b>xii</b>
<b>Executive Summary</b>	<b>xiv</b>
<b>Recommendations for policy reforms and practice improvements</b>	<b>xxi</b>
<b>Chapter 1 Introduction</b>	<b>1</b>
1.1 Aims of the Study	1
1.2 Care proceedings process and outcomes	3
1.3 Selecting Outcomes	5
1.4 Structure of the Report	7
<b>PART 1: THE RESEARCH IN CONTEXT</b>	<b>9</b>
<b>Chapter 2 Context</b>	<b>9</b>
2.1 Introduction	9
2.2 Care Proceedings Reforms	11
2.3 Reform to the Family Justice System and the Family Courts	13
2.4 Changes impacting on adoption and special guardianship	15
2.5 Austerity: the context for families and local authorities	20
2.6 The local authority social work context	23
2.7 The context in Wales	27
2.8 Conclusion and summary	28
<b>Chapter 3 Method</b>	<b>30</b>
3.1 Introduction	30
3.2 Research design	32
3.3 Data and data collection	34
3.4 Access, ethics and anonymity	37
3.5 Data linkage	39
3.6 The samples	40
3.7 The case-file Study	42
3.8 Analysis	46
3.9 Limitation of the Study	46
3.10 Data Archiving	48

<b>Chapter 4 Theoretical perspectives</b>	<b>50</b>
4.1 Family support and child protection	50
4.2 The courts and local authorities	55
4.3 Procedure and decisions	59
4.4 Understanding outcomes	65
4.5 Conclusion and summary	69
 <b>PART 2: THE USE OF CARE PROCEEDINGS AND PRE-PROCEEDINGS</b>	 <b>70</b>
<b>Chapter 5 Bringing care proceedings</b>	<b>70</b>
<b>Part 1: Intervention to protect children</b>	<b>70</b>
5.1 Introduction	70
5.2 Pre-proceedings and care proceedings	71
5.3 The decision to bring proceedings	76
<b>Part 2: The families subject to care proceedings and their circumstances</b>	<b>80</b>
5.4 The children subject to care proceedings and their families	81
5.5 Family difficulties and parenting problems	85
5.6 Children's services' involvement prior to the proceedings	90
5.7 Conclusion and summary	93
 <b>Chapter 6 Diversion and the pre-proceedings process</b>	 <b>95</b>
6.1 Introduction	95
6.2 Diversion	96
6.3 Case examples	97
6.4 Conclusion and summary	99
 <b>PART 3: COURT PROCESS, CARE DURING PROCEEDINGS AND DECISIONS</b>	 <b>101</b>
<b>Chapter 7 Court proceedings</b>	<b>101</b>
7.1 Introduction	101
7.2 Proceedings before and after the introduction of the PLO	102
7.3 Operating the PLO	104
7.4 The assessment of kin	113
7.5 Case Duration	118
7.6 Views on operating the PLO	119
7.7 Variations in the operation of the PLO	122
7.8 Conclusion and summary	123
 <b>Chapter 8 Care proceedings and the legal arrangements for children's care</b>	 <b>125</b>
8.1 Introduction	125
8.2 Care before the start of proceedings	127
8.3 Care during the court proceedings	129
8.4 Children not looked-after during proceedings	133



8.5 Conclusion and summary	136
<b>Chapter 9 Court Orders</b>	<b>138</b>
9.1 Introduction	138
9.2 Orders made in care proceedings in the Study	140
9.3 Making court orders	142
9.4 The differences in the orders made between Samples and Areas	146
9.5 Contact orders and arrangements	153
9.6 Conclusion and summary	155
<b>PART 4: OUTCOMES OF CARE PROCEEDINGS FOR CHILDREN</b>	<b>157</b>
<b>Chapter 10 Care after the end of care proceedings</b>	<b>157</b>
10.1 Introduction	157
10.2 Implementation of care plans	157
10.3 Leaving care	160
10.4 Adoption	162
10.5 Care for children remaining looked after	168
10.6 Further proceedings	176
10.7 Conclusion and summary	179
<b>Chapter 11 How did the children fare?</b>	<b>181</b>
11.1 Introduction	181
11.2 Wellbeing ratings	182
11.3 Children living with their parent(s)	185
11.4 Children living with kinship carers	188
11.5 Children with care orders and plans for long-term care	192
11.6 Conclusion and summary	196
<b>Chapter 12 Achieving wellbeing for children after care proceedings: practice challenges</b>	<b>198</b>
12.1 Family dynamics and family contact	198
12.2 Sibling placements and contact	204
12.3 Services	209
12.4 Conclusion and summary	219
<b>Part 5: DISCUSSION AND RECOMMENDATIONS FOR PRACTICE</b>	<b>222</b>
<b>Chapter 13 Context at the end of the Study</b>	<b>222</b>
13.1 Introduction	222
13.2 Care, courts and care proceedings	223
13.3 Improving data on the operation of the Family Justice System	230
13.4 Developing children's social care and knowledge on children's outcomes	231

13.5 Conclusion and summary	236
<b>Chapter 14 Discussion and recommendations</b>	<b>238</b>
14.1 Introduction	238
14.2 The use of care proceedings	239
14.3 Care proceedings under the PLO 2014	242
14.4 Care proceedings and s.20	244
14.5 Support after care proceedings	247
14.6 Understanding outcomes	248
14.7 Improving outcomes	252
14.8 Improving data on family justice	254
14.9 Using data to establish and support practice within local authorities	257
14.10 Transparency in family justice	259
<b>Appendix 1: Comparability of Samples</b>	<b>262</b>
<b>List of cases cited</b>	<b>265</b>
<b>References</b>	<b>267</b>

## List of Figures

1.1a: Samples and time points	2
1.1b: Data sources	2
2.1: Number and rate of care proceedings applications 2009-10 to 2017-18 (England)	10
2.2: Adoptions in England 2003-2018	16
2.3: Placement order applications, orders and adoption (from care) orders 2006-2018	18
2.4: Public law and private law SGOs and Children leaving care by SGO 2006-2018	19
2.5: Children on child protection plans and children looked after, England, 2010-2018	27
2.6: Number of s.31 applications in Wales 2008-9 to 2017-18	28
3.1: Rate of care proceedings applications per 10,000 children in the English sample LAs 2008/09 to 2014/15	42
5.1: Children's ages in the two samples (using DfE age groupings)	81
6.1: Outcomes after 6 years for the 29 'pre-proceedings only' cases from the English LAs	97
7.1: Care proceedings process for S1 and S2	102
7.2: Sample 2 Judicial Continuity	104
7.3: Timing of the appointment of experts (S2 only)	107
7.4: Use of experts at the different stages of cases (S2 only)	110
7.5: Numbers and timing of starting/ordering kin assessments (S2 only)	114
7.6: Length of time children placed with kin before SGO	117
7.7: Mean case duration in weeks by Area and sample	119
8.1: Timing of entry to care before the proceedings	128
8.2: Entry to care before and during the care proceedings	129
8.3: Children's care during the proceedings and its legal basis, samples compared	130
9.1: Court Orders (children) S1 and S2 compared	140
9.2: Court orders (children) made at IRH and Final Hearing (S2 only)	141
9.3: Children's age at Placement Order S1, S2	146
9.4: SGOs with/without SOs by Area and Sample	148
9.5: Supervision Orders by Sample and Area, including CAOs to parents with SOs	151
10.1: Leaving curves All LAC and children in care proceedings and S1, S2	160
10.2: Rate of leaving care after the end of proceedings S1, S2	161
10.3: Time to placement and adoption S1, S2	162
10.4: Outcome of Adoption Plans S1, S2	165
10.5: Number and age at Adoption S1; at Placement for Adoption S2	167
10.6: Time to placement/adoption S1, S2 and England averages 2010-2017* compared	168

10.7: Number of placements from Final Hearing to T1 (1 year or to 31.3.16)	170
10.8: Number of placements from Final Hearing to T2 (5 years), S1	172
10.9: Further proceedings S1, S2	178
11.1: Wellbeing scores for children in parental care	185
11.2: Children living with parents, trajectories between T1 and T2 (S1)	185
11.3: Wellbeing scores for children in kinship care	188
11.4: Children living with kinship carers, trajectories between T1 and T2 (S1)	189
11.5: Wellbeing scores for children in long-term care	192
11.6: Children in long-term care, trajectories between T1 and T2 (S1)	192
13.1: Numbers of children becoming looked after by s.20, care orders and emergency provisions 2009-2018 (England)	225
 Box 3a: Guidance for researchers on rating (example)	 45
Box 4a: Decision-making in care proceedings	61
Box 5a: Family Network Meetings and Family Group Conferences compared	74
Box 5b: Procedures for authorising care proceedings	77

### **List of Tables**

3.1: Cases, sampling percentage and sample by local authority	40
3.2: Number of children in the Samples by local authority	40
3.3: Summary of Case-file Sample by order and child's age, S1 and S2	44
5.1: Local authority's concerns about mothers and fathers	87
5.2: 5 top ranking concerns about mothers' parenting in each sample	88
5.3: 5 top ranking concerns about fathers' parenting in each sample	89
5.4: Top 5 positives relating to mothers in each sample	90
8.1: Orders made for children not looked-after/looked-after during proceedings	134
8.2: Effect of not being looked-after on order made - summary statistics	135
9.1: Orders made – numbers and proportions S1 S2, and at IRH and FH	141
10.1: Sibling placement by carer	174
10.2: Orders and possible future proceedings	176
11.1: Court orders in the full and purposive samples	182

## **Acronyms**

ADCS	Association of Directors of Children's Services
ADM	Agency Decision Maker (for adoption decisions)
AO	Adoption Order
CAO	Child Arrangements Order
CG	Children's Guardian (a Cafcass/ Cafcass Cymru worker)
CiN	Child in Need; Children in Need Database
CJ	Circuit Judge
CLA	Child Looked After Database
CMC	Case Management Conference
CMH	Case Management Hearing
CO	Care Order
DBS	Disclosure and Barring Service
DFJ	Designated Family Judge
DJ	District Judge
DV	Domestic Violence/ Domestic Abuse
EPO	Emergency Protection Order
FCMH	Further Case Management Hearing
FG	Focus Group
FGC	Family Group Conference (see box 5a)
FH	Final Hearing
FJC	Family Justice Council
FNW	Family Network meeting (see box 5a)
FJR	Family Justice Review
FSW	Family Support Worker
HMCTS	Her Majesty's Courts and Tribunal Service
ICO	Interim Care Order
ICAO	Interim Child Arrangements Order
IRO	Independent Reviewing Officer
IRH	Issues Resolution Hearing
ISO	Interim Supervision Order
ISW	Independent Social Worker
LA	Local Authority
LAA	Legal Aid Agency
LAC	Looked after child
LAIT	Local Authority Interactive Tool
LAS	Local Authority Solicitor
LbP	Letter before proceedings
LPM	Legal Planning Meeting
MHP	Mental Health Problems
NPD	National Pupil Database
NFJO	Nuffield Family Justice Observatory

PLO	Public Law Outline
PLWG	Public Law Working Group
PO	Placement Order
PP	Police Protection
PPM	Pre-proceedings Meeting
PPP	Pre-proceedings process
RAA	Regional Adoption Agency
RO	Residence Order
RQ	Research Question (these are listed on p.2)
S1	Sample 1 (2009/10)
S2	Sample 2 (2014/15)
SDQ	Strengths and Difficulties Questionnaire
SG/ SGO	Special Guardian/ Special Guardianship Order
SoS	Signs of Safety (a way of working with families in child protection)
SO	Supervision Order
SWET	Social work evidence template (format for social worker's evidence)
SWM	Social work manager
T1	Time 1 (12 months after order)
T2	Time 2 (60 months after order)

## Executive Summary

The *Outcomes of care proceedings for children before and after care proceedings reform Study* (referred to as the *Outcomes Study*) examined the impact of the PLO reforms introduced in 2013-14, which aimed to speed up decision-making in care proceedings. The study examined the impact on the legal process and the outcomes for the children. It compared the process and the outcomes for two samples of children: S1 had proceedings in 2009-10, before the reforms, and S2, after, in 2014-15. Children's outcomes after care proceedings were compared one year after the end of the proceedings, T1; outcomes for S1 were also examined and compared at T2, 5 years after the proceedings. The reforms and other relevant changes to law and social work between the two samples are discussed in Chapter 2. Further developments, which are relevant for the final discussion and recommendations, are brought together in Chapter 13. The theoretical background to examining social work with children and families, family support and state intervention, decision-making in court proceedings and the relationships between law and social work are explored in Chapter 4.

### Method (Chapter 3)

The Study used mixed methods and four distinct data sources (court case files, administrative records, children's social care files and interviews/focus groups with professionals) to examine the operation of the PLO and its impact on children's outcomes by comparing two random samples of care proceedings, brought by 6 local authorities in southern England and Wales *before* (S1, 170 cases with 290 children, issued in 2009-10) and *after* the PLO reforms (S2, 203 cases with 326 children, issued in 2014-15). Qualitative interviews with local authority social work managers and lawyers (56), and two focus groups (FGs) with judges provided further information about decision-making under the PLO.

Deterministic methods were used to link proceedings data for each child with their administrative data contained in the Department for Education's Looked after Children (CLA) and Children in Need (CiN) databases (and the Welsh equivalents) up to 31<sup>st</sup> March 2016, so that children's care and service journeys after the end of care proceedings could be explored. Match rates of S1 90% and S2 98% were achieved. Subsequent proceedings involving the children from England were identified using the Cafcass e-cms database and summarised in the database.

Children's local authority social care files were the source for information on children's lives and wellbeing after the proceedings, using files of a sub-sample of 118 children (S1 58, S2 60), selected purposively by age and the orders made. Researcher ratings of wellbeing were made based on information at T1 (1 year after the final order in care proceedings) for both samples and at T2 (5 years after the order) for S1. Quantitative data were analysed using SPSS v.23; a project was created in NVivo v.11 to facilitate analysis of the qualitative data.

## **Findings**

### **Applications (Chapter 5)**

All the 6 local authorities had developed clear procedures, involving a local authority lawyer and a service manager, to make decisions about using care proceedings and ensure that alternatives had been thoroughly considered. Scrutiny of applications was closer in 2014 than it had been in 2010 but the focus remained on the needs of the child.

There was little difference between the children and families subject to proceedings in S1 and in S2. Overall, more than half the children subject to proceedings were aged under 5 years. The majority of the cases (63%) concerned only one child but only 29% of the children were 'only children'. Most had siblings who were either subject to proceedings with them or already separated from the parents. Over 70% of the families were white British and over 20% had mixed ethnicity.

Children's care was undermined by many problems in their parents' lives with nearly two-thirds of mothers experiencing domestic abuse and a similar proportion of both mothers and fathers viewed as not co-operating with children's services to improve their care. Despite their difficulties more than half the mothers in S1 and more than a third in S2 demonstrated emotional warmth and around half had some support from their extended family. Almost all families were known to children's services before there was any consideration of care proceedings. Nearly two thirds of children had child protection plans at the time of the application and 8% had previously been subject to care proceedings. The period of active social work before proceedings was shorter for S2 reflecting the increased concern with avoiding drift. Protection and support through s.20 accommodation was common before proceedings were issued. There was evidence of more planning of care proceedings and less use of a crisis response in S2 than in S1.

### **Diversion from care proceedings-follow up pre-proceedings only cases (Chapter 6)**

The study found that seven of 29 'pre-proceedings only' cases in England from the earlier study had subsequently gone into care proceedings, reducing the diversion rate to just over 20%. Others remained 'children in need' and more than a quarter had experienced changes of carer without going through care proceedings (i.e. to kinship carers, s.20 foster care or their other parent). These changes involved private law proceedings for some children and long-term s.20 accommodation for others.

The follow-up shows that whilst care proceedings can be avoided, alternative care and support over the longer term are often necessary.

### **Court proceedings (Chapter 7)**

Our evaluation of the operation of care proceedings after the PLO found effective working amongst key organisations within the family justice system. There was case preparation by local authorities, timely appointment of Cafcass/ Cafcass Cymru children's guardians and robust case management, which controlled the appointment of experts, and reduced the



number of hearings and case length, compared with S1. Mean case duration for S2 was 26.62 weeks compared with 53.34 weeks for S1. There was more limited success in ensuring judicial continuity and completing cases at the IRH, both of which impact on case duration. There were wide variations across the sample in the proportion of cases completed at IRH and in judicial continuity. Time constraints and late presentation of potential relative carers also resulted in very limited time being allowed for some kin assessments; a third of children subject to an SGO in S2 moved to their carer only at the Final Hearing.

Judges, local authority lawyers and social work managers who participated in focus groups or interviews, were generally very positive about the PLO. Judges felt it supported their efforts to keep cases proportional, restrict expert appointments and hear from social workers who knew the family; local authority staff welcomed the greater emphasis on social workers' evidence and more timely decisions for children. Both favoured greater flexibility allowing some cases to take longer and agreed on some of the circumstances where this should be allowed.

### **Care during proceedings (Chapter 8)**

A substantial minority (27.5%) of children were accommodated by the local authority (s.20) before the proceedings were issued, with three-quarters of these children becoming looked after less than 4 months before the application. Although the majority of children subject to care proceedings were in care under ICOs, some (S1 8.7%, S2 14.4%) children remained in s.20 arrangements throughout the proceedings; the relationship between use of s.20 and sample was a statistically significant. All but one local authority reported difficulties in obtaining ICOs with permission to remove the child into care from the courts. Where courts refused the ICO or would not allow removal, children were usually made subject to an ISO. As a consequence, 20% of the sample were not looked after by the local authority during the proceedings; the proportion was larger in S2. Children in S2 who were not looked after were significantly older and their proceedings were shorter than those of children in care during proceedings. Being in care during proceedings was also correlated with the order made at the end of proceedings. Children at home with a parent or relative during proceedings did not necessarily remain there after the final order: some moved to their other parent or a different relative, a few entered care.

Children not looked after during proceedings are absent from the DfE administrative databases and those subject to s.20 are hidden because they are not separately identified as subject to proceedings. This does not help local authorities to understand children's progression through the different levels of intervention for protection or the interaction of court and local authority decisions. The use of care proceedings and SOs would be clearer if recorded in the CiN database, see sections 14.8 and 14.9 for further discussion.

### **Court Orders (Chapter 9)**

There were marked differences in the proportions of Placement (POs), Special Guardianship (SGOs) and Supervision (SOs) orders between the two samples, with fewer POs, particularly

for children 1 year of age and more SGOs and SOs in S2. All types of order were made at the IRH in S2 but 'lower tariff' orders were more common at this stage.

The decision in *Re B-S* impacted on legal advice to local authorities, care plans, Children's Guardians' views, contests and on the orders made. Judges saw it as the reasons for the change in orders; local authority interviewees considered that shorter proceedings were also a factor.

SOs were more commonly used with SGOs than previously, at least in part because of the reduced opportunities for thorough assessment and testing placements before orders were made. Most CAOs (Child Arrangement Orders) were made where children were placed with a parent, not for kin care. Contact orders were rarely made where children were subject to COs (Care Orders) but were made with more than half SGOs and more than a third CAOs.

### **Care after care proceedings (Chapter 10)**

Linking the Study court data with the DfE administrative data made it possible to see what happened to children after the Final Hearing but provided very little information for children who were not in care, particularly more than one year after the order. Plans for reunification or kinship care were implemented by the orders made at the end of care proceedings (SO, CAO/RO or SGO). Most children with adoption plans were adopted; most children with plans for long-term care left care at age 18 years. The end of care proceedings is a key point when children leave care; analysing CLA data by the end of care proceedings produces a very different leaving care curve from one based solely on the duration of care.

Fewer S2 children were placed for adoption; the number of children with adoption plans was lower, particularly so for those aged over 1 year when the PO was made; but they were placed for adoption more quickly and a higher proportion of those with POs were placed within 11 months of the order and overall.

Children in S2 had fewer care placements in the year after the order than those in S1. More S1 children aged under 10 years than over 10 years at the end of proceedings had only one care placement in the 5 years after the proceedings ended. Children placed (or remaining with) parents or relatives were more likely to be placed with a sibling than those in adoptive or foster care. 1 in 6 of those who were placed with, remained with or returned to a parent or relative were separated from all their siblings, compared with more than two-fifths of children placed with unrelated carers.

Further s.31 applications were brought in, almost a third of S1 cases ending in SOs. The proportion in S2 was lower (22%) but over a shorter period, two years, rather than 6 years. Contact disputes were the most common private law applications, and more common where there was a CAO with SO than for other private law orders.

### **How did the children fare? (Chapter 11)**

The analysis of local authority case files for selected cases included a researcher-rating of the children's wellbeing one year after the end of the proceedings (T1) and for the S1 children, 5 years after the final order (T2). Children were grouped according to the

arrangement for their care after the order – placement with parents, with family or friends or in local authority care. The analysis identified a range of issues relating to changes in wellbeing over time and challenges facing children, their carers and local authorities.

It was more common for children's wellbeing to decline than improve over time, but the reasons for this are complex and cannot simply be ascribed to the quality of care they were receiving – they may be to do with the child's emerging needs, the impact of previous ill-treatment, family circumstances, disengagement from services, or inadequate services (or any combination of those factors). Overall, the S1 children in foster care appeared to be faring better at T2 than the children with other care arrangements who were still in touch with the local authority. Local authority files contained little or no information on a quarter of the children in the kinship care group 5 years after the end of the proceedings, either because they were no longer receiving services, or because they lived outside the authority.

The case study examples included cannot be taken as representative but illustrate the range of issues for the different groups of children and their carers.

### **Practice Challenges (Chapter 12)**

Regardless of the order and placement, caring and providing help for children who have been through care proceedings is likely to present challenges. Moreover, the legal, policy and organisational frameworks differ for children in parental care, kinship care or public care, and these give carers and local authorities very different powers and responsibilities. The case file analysis showed the challenges of sometimes fraught family relationships, uneasy sibling bonds and restricted or delayed service provision; but there were also examples of warm and beneficial family relationships, positive sibling relationships and responsive and timely services. The boxes below give the key messages in each of those three domains – family dynamics, sibling relationships and service provision. One of the core underlying messages is about the importance of realism in the assessments and planning of local authorities and in the decisions of the courts, regarding the needs of the children and the adults caring for them. A second key message is about the importance of social work practice to support the children and their families, both in securing and coordinating services from other agencies, and in direct face-to-face work.

#### **Messages for practice: family dynamics and contact**

- Families can be a major source of support for children and for their parents, and the default position, in law and practice, is to try to work with them to help them provide that support.
- Family dynamics are complex, and all the more so where there have been care proceedings and children are placed with kin. Planning and deciding about continued contact require a holistic assessment of its impacts, both positive and negative.
- Special processes - family group conferences and family network meetings - can be effective ways of promoting family involvement but the essential requirement is committed relationship-based direct practice with children, carers, parents and other kin.

- Parents and other family members have their own needs, wishes and interests, and these may not always be compatible with the best interests of the child. Conflicts and tensions are likely, between any of the parties – between the parents, parents and kinship carers, parents and foster carers, between different parts of the extended family. Clear expectations, suitable support and monitoring are essential.
- Local authorities should be cautious about too quickly leaving contact arrangements down to the family (or indeed, leaving too much of this down to foster carers or kin carers).
- Courts need to be mindful of the ‘mixed messages’ that judgments might sometimes give about contact and possible reunification.
- Skilled social work, and specialist help if necessary, can help parents to build good relationships with their children, even when the children do not live with them, and can help children to understand things better and carers to support them.
- Social workers have to be mindful of the wishes and autonomy of children and young people around family contact, but also aware of their safety and wellbeing.
- Agencies need to support social workers to work in skilful and sensitive ways, in these demanding cases.

#### **Messages for practice: sibling relationships**

- Sibling relationships are usually important and beneficial for children, but for those who have been through care proceedings (whether they are now in public care, kinship care, adopted or with their parent/s) it is important to recognise the impact that backgrounds of adversity are likely to have on those relationships; ongoing and skilful support for carers may be necessary.
- Separation of siblings may take place at various points in time. It may occur before children come into care, because of families having made their own decisions about who should look after the children; or at the point of entry to care, perhaps based on the size of the family and the availability of carers at the time; or later, if it becomes apparent that the children’s needs are not compatible in the same placement.
- The CoramBAAF ‘Together or Apart’ guidance is a well-known framework for assessing sibling relationships. Social workers should consider the quality of the relationship, the support that is necessary and available, and the likely consequences of separation.
- Timeliness is crucial: assessments should not be rushed, and it is important to recognise that relationships may change, for better or worse, as time goes on; but equally, undue delay can hinder the chances of the children ever reaching a stable placement.
- Local authorities should plan ahead, in their recruitment of foster carers and prospective adopters, to find suitable placements for sibling pairs or groups.
- Local authorities may not always have legal powers or responsibilities to specify what contact should take place; in these cases, social work skills of discussion and support come to the fore.

- Direct work with the children can have a vital part to play in helping them understand and, if/as appropriate, maintain sibling relationships (by living in the same placement or by contact arrangements).
- Direct work with the carers, parents and other members of the child's family may also have a vital part to play in helping them understand and, if/as appropriate, maintain sibling relationships.

### **Messages for practice: services**

- Children who have been through care proceedings are likely to have suffered significant harm from abuse, neglect, and other forms of adversity. One can anticipate high levels of need. They may also have genetic conditions and complex health needs. For younger children, these may become more apparent over time.
- Whoever has care of the children are likely to need ongoing support (whether parents, kinship carers, foster carers or adopters) in a variety of forms. They may need parenting advice and emotional support but also practical help (e.g. with housing, finances, day and respite care, contact arrangements).
- Support always has to be assessed and planned on an individual basis, recognising the legal context and the specific needs, strengths and wishes of the children, their carers and families.
- Local authorities should be cautious about closing cases too soon, although there may be little they can do if families or young people refuse services and there is no court order; but the case file study shows powerfully how needs can develop or re-emerge at any time. There could be a system for regular 'no obligation' checking-in contact, and clear routes for carers and young people to re-refer themselves.
- Services and support are often provided by other agencies, notably health, education, and independent foster care agencies. They too are likely to be under pressures of high demand and limited resources. Local authorities need to ensure good links with these providers, at policy and practice levels; and ensure they have effective processes for commissioning and review of services. In some situations they may need to develop their own parallel or alternative service (as with the CAMHS examples described in Chapter 12).
- Services are under great strain, but there are examples of positive help and good outcomes, sometimes against the odds. Local authorities need to learn from and promote these stories, as they argue for better resourcing.

## **Recommendations for policy reforms and practice improvements**

Further details and discussion of the rationale for these proposals are contained in Chapter 14.

### **The use of care proceedings**

The use of care proceedings should be considered in the light of the following findings:

- Continuing purposeful social work within the pre-proceedings process may achieve as much in terms of protection from risk and improved care as bringing proceedings where children remain at home during the proceedings and become subject to supervision orders at their end.
- Unless there is a good case for removal under an ICO or parents agree to the child being in care, the local authority cannot expect to obtain orders which allow for permanent care or adoption at the end of care proceedings.
- Courts making final orders should consider the parents' history of engaging with services and maintaining improved care before concluding that a supervision order is a proportionate response, particularly where a supervision order has been made for the child in the previous two years.

### **Care proceedings under the PLO**

- Timely decisions in care proceedings make substantial demands on practitioners including judges but are largely positive for children, parents, local authorities and courts. Effective use of the IRH is crucial, changes to listing practices, judicial training and control of expert appointments are required to achieve this.
- Proposals to extend the timetable (other than for individual cases) require clarity about what this aims to achieve.

### **Care proceedings and using s.20**

- Judges need a better understanding of local authority work in children's social care, and about how this interacts with their role hearing care proceedings. The Judicial College should develop a programme which provides a better introduction to the local authority processes and social work approaches to protecting children and supporting families.
- Revaluing s.20 will not be achieved through aggressive criticism of local authority decision-making outside the court arena, nor by further prescriptive guidance on its use. Rather, this requires respect for the division of responsibilities between courts, local authorities, children's guardians and IROs, recognition of its benefits and a commitment to resolving disagreements through discussion.

### **Support after care proceedings**

- Where SGOs are made in care proceedings, distinguishing between children according to whether or not they were looked after before the order was made is indefensible.
- The current system for financial support for kin carers is not fit for purpose. It is too complex, and risks leaving children and their carers in poverty.

### **Understanding outcomes**

- Accurately predicting the longer-term outcomes for individual children is impossible, but trends and patterns can be identified. Awareness of these from judges, children's guardians and local authorities provides a useful frame of reference for assessing cases and making care plans that are attuned to the likely future needs of the children and their carers.
- Non-blaming and non-defensive discussions between judges, children's guardians, local authorities and other agencies can be an effective way for all to learn from cases that do not turn out well.

### **Improving outcomes**

- Policymakers, agencies and courts need to appreciate that good outcomes for children cannot be guaranteed; but the chances are increased by realistic assessments that address what the history means for the likely future needs of the children and their families; by timely and effective services from all agencies; by sustained, skilful direct work with the children and families; and by well-supported, committed carers.
- When planning reform in children's services and the courts, policymakers have to anticipate the likelihood of 'pendulum swings', and the dangers of change in one part of the system having unplanned consequences elsewhere.
- The core requirement to improve the outcomes for children is for national government to increase substantially the funding for local authority child and family services, and their partner agencies.

### **Improving data on family justice**

- Linking care proceedings and children's services data demonstrates how use of local authority services and use of care proceedings interact and allows a deeper understanding of both.
- Both the Department of Education and the Ministry of Justice could enable this improved understanding by making changes to, respectively, the CiN data collection and the Ministry of Justice Datashare. Changes are also required in Welsh government data.
- The Nuffield Family Justice Observatory should build promoting data linkage into its development programme.

## **Using data to support and improve practice within local authorities**

- Local authorities should consider including care proceedings variables in their own analysis of children's services and the provision of care. Where local authority data systems are being changed, legal departments should adopt the same system as used in children's social care.
- Patterns of service use comparing cases which enter proceedings and those that do not are valuable for informing service provision and the use of care proceedings. Analysing cohorts of cases based on the date of starting the pre-proceedings process or care proceedings can be used to monitor the impact of policy or practice changes relating to care proceedings.
- Information on patterns of outcomes 1 year after orders were made can enhance family justice professionals' understanding of the effects of care proceedings, including their limitations, and demonstrate the local authority's involvement with children continues after the end of the proceedings.

## **Transparency in family justice**

- Improving data on court process can make family justice more transparent without risking identifying individuals.
- Transparency by numbers can avoid the distortions arising from the selective publication of judgments, provide the basis for clear accounts of court practice and contribute to the reduction in unwarranted differences in process or outcome in different courts.
- The insights from large numbers and broad patterns are further enhanced by in-depth, qualitative analysis of case records and practitioners' accounts of practice. Such a mixed methods approach, as used in this study, offers a nuanced picture of different experiences and perspectives, and insights into the positives and negatives of policy, practice and outcomes.



## PART 1: THE RESEARCH IN CONTEXT

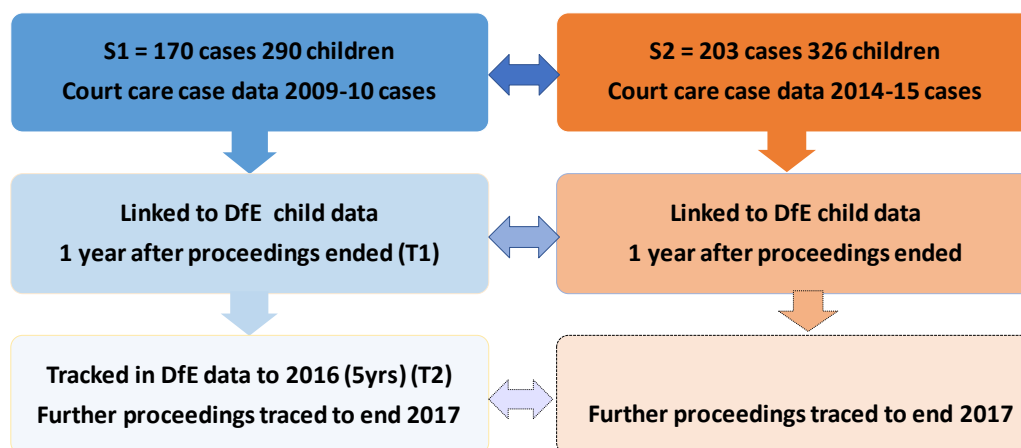
### Chapter 1 Introduction

#### 1.1 Aims of the study

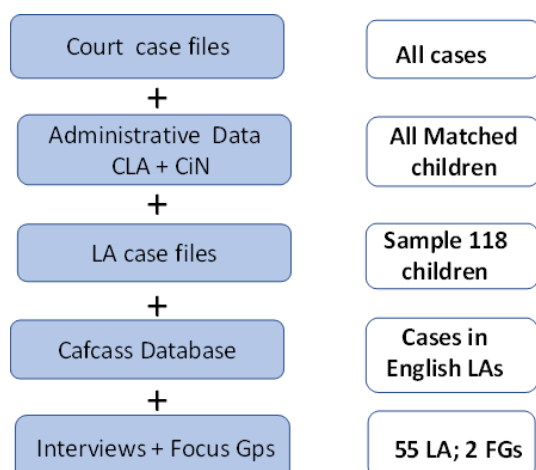
The *Outcomes of care proceedings for children before and after care proceedings reform study* (2015-2018), funded by the ESRC (ES/M008541/1), had three interrelated objectives. First, it aimed to examine the impact on children of care proceedings' and the reforms introduced in April 2014, by studying court applications made in 2014-15 for a sample of children and their outcomes and comparing these with a sample from 2009-10. Outcomes were not limited to the orders made in the proceedings. Secondly, the study aimed to track children's subsequent care and service journeys by using administrative data held by the Department for Education and the Welsh Government, records of subsequent family law proceedings and the children's social care files to establish what happened and how children were faring one year (T1) and five years (T2) after the end of proceedings. Thirdly, the study aimed to assess the potential for, challenges in and limitations of linking court and administrative data relating to children subject to care proceedings to obtain information, which could be used to provide feedback for local authorities and the Family Justice System about children's outcomes.

The study used a combination of quantitative and qualitative methods, and linked data collected from two samples of care proceedings: sample 1 (S1) before the reforms; sample 2 (S2) after the reforms with other data relating to the children. The cases in these samples were randomly selected from applications made by the same six (anonymous) local authorities that took part in our study of the pre-proceedings process for care proceedings, referred to in the report as the *Pre-Proceedings Study*, full details of which are given in the report, *Partnership by law?* (Masson et al 2013). These are two Shire Counties, an Inner and an Outer London Borough and two Unitary Authorities, five located in southern England and one in Wales. The children were matched to their records contained in two administrative datasets, the Looked-after Children (CLA) dataset and the Children in Need (CiN) dataset which is contained within the National Pupil Database (NPD); these were the primary sources of data for service provision to each child after the care proceedings. More detailed information on services after the proceedings was collected from social care files for a subsample of 118 children. Cafcass databases were used to identify subsequent children proceedings for all the England sample. Qualitative interviews were conducted with 56 social work managers and lawyers in 2016-17. There were also two focus groups with judges, conducted in January 2018. The analysis focused comparing the proceedings before and after the reforms and on children's outcomes at two time points, one year (T1) and five years (T2) after the end of proceedings. Figure 1.1 provides outlines key features of the study; further details of the method are set out in Chapter 3, Methods.

**Figure 1.1a: Samples and time points**



**Figure 1.1b: Data sources**



Using these methods, we sought to answer the following questions:

Q1. What information can be derived from administrative records about outcomes for children 12 months after the final order was made in care proceedings?

Q2. What are the characteristics of children and proceedings where care plans are (or are not) fulfilled 12 months after the final order?

Q3. To what extent (and for which children) does outcome data derived from administrative records 5 years after the final order in care proceedings affirm outcome data after 12 months?

Q4. What information from children's case files is required for outcomes recorded in administrative data to be meaningfully interpreted?

Q5. What explanations are given by local authority social workers, managers and lawyers for the making, non-implementation and breakdown of care plans which are not successfully fulfilled?

Q6. To what extent do care proceedings under the new PLO result in different processes, plans, orders and outcomes after 12 months from those brought in 2009/10?

Q7. What further family law proceedings are brought in relation to the children in the study?

Q8. To what extent can outcome measures in administrative datasets inform the practice of professionals in the family justice system?

Responsibility for children's social care services in Wales is devolved, which means that regulation and inspection of services is different between the two countries. The process of devolution has been gradual; when S1 was collected, the legislative frameworks for England and Wales were closely aligned although there was separate guidance on some aspects of children's services. This was also the case when S2 data was collected. Subsequently, legislation, particularly the Social Services and Wellbeing (Wales) Act 2014, implemented in April 2016, has provided a distinct framework for services in Wales, including those provided in the context of supporting children and families before, during and after care proceedings.

For clarity, unless stated otherwise, references in this report to statutory guidance are to the English sources only (see section 2.7 for more details).

## **1.2 Care proceedings process and outcomes**

Major reforms to care proceedings process were introduced in April 2014 following recommendations from the Family Justice Review (FJR 2011b), enacted in the Children and Families Act 2014 (CFA 2014), new court rules and a new Public Law Outline (PLO 2014). These reforms were intended to speed up care proceedings so that decisions about children's futures were made more quickly and to reduce the demands on court time and costs, particularly for the court service and the Legal Aid Agency. Briefly, the reforms set a statutory time limit of 26 weeks for care proceedings and restricted extensions of this; ended the routine review of all interim orders by removing the time limits on them (CFA 2014, s.14); limited the commissioning of expert evidence, making the courts more reliant on social work assessments from local authority staff and children's guardians (CFA 2014, s.13); and focused the court's assessment of the care plan on the 'permanency provisions' therein (CFA 2014,s.15).

Local authorities bring care proceedings to obtain court orders for children they consider need protection either where parents will not agree to protection plans or informal agreed arrangements are not complied with or are insufficient. The courts hearing care proceedings have power to make Public Law orders: care orders, COs (Children Act 1989, s.33), supervision orders, SOs (s.35) and placement orders, POs (Adoption and Children Act 2002, s.21), all of which impose obligations on local authorities and restrictions on parents. Courts may also make contact orders for children in care under s.34. Alternatively, the court can make Private Law orders: child arrangements orders, CAOs (formerly known as residence orders, ROs) setting out children's living arrangements, including who has parental responsibility (s.8) and special guardianship orders, SGOs (ss.14A-F), which grant people, other than parents, full responsibility for a child's upbringing. In these cases, the court may also make CAOs under s.8 regarding with whom the child may 'spend time or otherwise

have contact' (formerly known as contact orders). The court can alternatively decide to make no order where it considers the child's circumstances do not require one; it must dismiss the application if the local authority does not prove that the child is suffering (or likely to suffer) significant harm which is attributable to parental care or the lack of it (s.31(2)). Where the child is to live with parents or relatives the court may make a family assistance order (FAO) (s.16) but rarely does so.

Formal responsibility for decisions in care proceedings lies with the court but, in practice, decision-making is distributed between all the professionals involved. Local authority children's services personnel (managers, social worker and lawyers) have a key role in providing and presenting evidence and assessments, which enable the court to understand the basis for the proceedings, the child's needs, how the local authority plans to meet them and the rationale for this. The children's guardian's role is to represent the child by instructing their lawyer, where the child is not able to do this. They are required to report to the court on the child's wishes and feelings, and to provide the court with an independent assessment of the child's welfare, the local authority's care plan and any alternative proposals. Lawyers for the parents and any other parties have responsibility to advise their clients, help them understand the proceedings and to represent their case, following their instructions, except where these conflict with their duty to the court (Law Society 2015; Pearce et al 2011). In theory, the court assesses all the evidence put by the parties, the local authority's plan for the child's care, the children's guardian's evaluation and any counter proposals from the parents or other parties and determines what order should be made, giving 'paramount consideration' to the welfare of each individual child (s. 1(1)(3) and (4)), considering the proportionality of any intervention (ECHR, art 8) and applying the 'no order' principle (s.1(5)). In practice, negotiation between the parties (or their legal representatives) is common: the local authority's factual basis for the intervention (the threshold, s.31(2)) is frequently agreed by the parents after amendment; care plans change, opposition falls away or is rekindled and agreed plans are presented to the court. Whether the order made results from a fully contested process, the full agreement of all concerned or something in between, it is the care proceedings system's attempt to predict which of the available arrangements and specific orders will achieve the best outcome for the child. It is a 'risk-based judgment call based on principles' (Ryder 2012b). The court cannot impose conditions about the child's upbringing or order the local authority to support those caring for a child under a CAO or SGO; the most it can do is add a supervision order.

The court has no continuing role to review or supervise the order after it is made (Masson et al 2008). Where there is no order or only private law orders, children's wellbeing is the largely the responsibility of their parents and carers, subject only to central government general responsibility to citizens and residents, and specific duties to provide social security benefits, health services etc. Local authorities retain legal responsibilities for safeguarding children, securing access to education and many other matters which affect the lives of families. They also have specific obligations to provide support services for special guardians, children subject to SGOs and their parents (s.14F), and this can include providing (means-tested) allowances (DFE 2016). Also, children's circumstances may mean that the

local authority considers them still to be ‘children in need’. If so, the children and their families will be owed ‘general duties’ under Children Act 1989, s.17, may have a ‘child in need plan’ with access to additional services (DfE 2018a). (From April 2016, this provision did not apply in Wales; the Social Services and Well-being (Wales) Act 2014, s.21 and s.37 set out the duty to assess and meet children’s needs). A supervision order, SO, which may be granted by the court without other orders or as an adjunct to a CAO or SGO, imposes a duty on the supervisor (usually a local authority social worker) to ‘advise, assist and befriend’ the child, and empowers the supervisor to give direction to the child, and with consent, to a person who has parental responsibility or with whom the child is living (s.35 and Schedule 3). Together, these responsibilities enable local authorities, central government and the NHS to support parents and carers and achieve positive outcomes for children.

If the court makes a care order the local authority obtains parental responsibility for the child and legal obligations relating to the choice of placements (s.22C) and to: safeguard and promote their welfare and educational achievement and to make use of services (s.22); to maintain and accommodate them (s.22A, s.22B); to keep their care plan under review (s.26); to plan for their leaving care; and to provide support to them up to the age of 25 years (ss.23A-24D). These onerous duties reflect the local authority’s obligations as the ‘corporate parent’ of children in its care and the understanding that the wellbeing of children subject to care orders is dependent on the care and support provided for them whilst they are in care and as young adults (Hart and Williams 2013; DFE 2014a).

### **1.3 Selecting Outcomes**

Court decisions in care proceedings are necessarily based on predictions about the child’s long-term needs and the capacities of individuals given responsibility for caring to do so; also, if a care order is made, on the local authority’s ability to implement the care plan and provide a positive care experience, which meets the child’s needs and enables them to flourish. These predictions are made by social workers with the support of managers, children’s guardians and expert witnesses, each using their knowledge of the child, the family, their experience working with other families and research evidence. Judges also draw on their experience but lack knowledge of what happens to most children and families once the order has been made. The Family Justice Review reflected that,

‘[J]udges and magistrates rarely know what happens to families about whom they have taken decisions ... the absence of any feedback mechanism leaves judges and magistrates without any way to learn about the effectiveness of their decision making, beyond an appeal on a point of law. There is a crying need for a culture in which feedback is given and accepted in the right spirit. In particular we recommend a pilot project which provides reports back to the relevant judges and magistrates from time to time (perhaps after one and three years) on the situation of children and families. ... This should be in addition to the regular sharing of statistical information.’ (FJR 2011b: para 2.204-5).

In designing a study of the impact of the care proceedings reform on outcomes for children we considered the potential of existing sources for data on individual cases which could be aggregated for cohorts of children subject to these proceedings before and after the reforms introduced in 2014 (Children and Families Act 2014; PLO 2014). The focus on outcomes for children was intended to shift attention from assessments of court proceedings by reference to their duration and the orders granted to the effects these decisions had on children's lives. We reviewed possible sources of data which were available for both S1 and S2 children and could shed light on children's outcomes. This led us to focus on administrative datasets on social services and family proceedings, and social care records. We expected that information would be more limited for children who were not in care and consequently did not have aspects of their care recorded in the CLA database. The CiN data could provide limited information but only for children who were recognised as 'in need'. We did not include education records because the nature of our sample meant that there would be very few children for whom even attainment data at one point in time would be available. There is now excellent work by the Rees Centre (Sebba et al 2015) which analyses educational outcomes for looked after children by linking care and education data.

From the information available in administrative data we focused on aspects of children's lives which could be regarded as resulting from decisions made in, or following from, their care proceedings. *Implementation of the care plan*, because this is a longstanding concern amongst judiciary and lawyers and is the subject of earlier research (Hunt and Macleod 1999; Harwin et al 2003). Where the care plan is for reunification, permanent care by a special guardian or adoption, implementation is marked by the child leaving care, an event which is recorded in the CLA database. *Permanence* is the specific focus of care plans required in care proceedings (s.31A), which is demonstrated by children in care remaining in placement (DfE 2015b) and children subject to SOs, CAOs, SGOs or no order not being subject to further care proceedings or entering care. Similarly, *Placement stability* can be identified for looked after children through separate care 'episodes' recorded in the LAC data. *Safety* (or its absence) is indicated by child protection plans or further care proceedings.

There is a dearth of information in the CLA and CiN datasets which indicates *wellbeing*. The Office for National Statistics (ONS) has developed measures for children's wellbeing covering such matters as happiness, relationships and activity, based on survey data and other sources (ONS 2018) but these are not used to collect data for children in care. Scores from the Strengths and Difficulties Questionnaire (SDQ), a validated measure of emotional and behavioural health for children aged 4 to 16 years (Goodman 1997), are required in the local authority's data return to the DfE for children who have been in care for a year (DfE 2012a, 2015a) but this is the only measure available. Other information labelled 'outcomes' is collected and published, indicating offending rates and substance misuse (DfE 2017a); educational attainment for looked after children, and experimental statistics have been produced relating to children missing from care (DfE 2017a). Together these provide a negative, problem-based picture of children in care.

Relationships are a ‘golden thread’ in children’s lives (Sinclair et al 2007; Boddy 2013) but go unrecorded in administrative data. The discrete record for each child contains no information about their family, the placements of any siblings, or contact. Linking court and LAC data can identify some children who were placed with their siblings but cannot indicate the quality of relationships. Important details such as contact with parents and siblings is recorded only in the case files for looked-after children, and so available where children are in care. The Cafcass database records court applications for contact and whether orders were granted; multiple applications suggest high levels of conflict, but further details necessitate examining the case file.

Children’s social care records provide an account of their lives written for administrative purposes. They record, for example, social work visits and activity; children’s needs and wishes; relationships and contact with family; carers’ experiences and concerns; education and development; reviews; and decisions taken. These records may include children’s own views about their lives as well as the views of parents, carers and professionals. They indicate how different aspects of children’s lives change over time, positively, negatively or both. Like all records they are partial: they are only a summary; they are subjective; they are written for specific purposes. However, they provide contemporary, written accounts of children’s lives whilst they are involved with children’s services. We extracted Information from these files for a sample of the children and as the basis for a researcher assessment of children’s wellbeing at T1 and T2. Further details of this and other aspects of the method are set out in Chapter 3, below.

Relying on written records, particularly administrative datasets is both a strength and weakness of this Study. It required a relatively small team and made use of data accessible to local authorities. Therefore, the method has potential for application beyond this research. However, the outcomes are selected from what is available and may not be ones which the children in the sample, their families and carers would select or consider most important to them. Additionally, we did not attempt to speak to children, their carers or professionals supporting them.

#### **1.4 Structure of the Report**

This report is divided into 5 parts; the findings from the study are contained in Parts 2 to 5.

Part 1: *The Research in context*. Chapter 1, Introduction, outlines the aims of the study and its key components. Chapter 2, Context, provides the legal and social work background to the research focusing on aspects most relevant to the study and the findings. Chapter 3, Method, provides details of the overall research design and for the separate components of the Study, discussing data access and ethical issues raised, the method of data linkage, the samples achieved and how data were analysed. Chapter 4 discusses the theories the researchers drew on for the Study.

Part 2: *Using care proceedings* focuses on the decision to bring care proceedings. Chapter 5 draws on the qualitative interviews to explore the local authority processes for deciding and preparing applications to court and provides an outline of the families and children, who

were in the care proceedings samples, their circumstances and the involvement of the local authority. Chapter 6 reviews the findings on diversion from court for children from the earlier study of pre-proceedings to look at how effective this was in the longer term.

Part 3: *Court process, care during proceedings and decisions* presents findings relating to the court process. Chapter 7 examines how the reforms (reducing the use of experts and restricting the length of proceedings) worked in practice in the courts in the Study. Chapter 8 uses the linked dataset to examine the legal arrangements for children's care during the care proceedings under interim orders or other arrangements, how this differed in the two samples and the implications for families and local authorities. Chapter 9 examines the orders made in the proceedings and how and why these changed following the 2014 reforms.

Part 4: *Outcomes of care proceedings for children* examines outcomes, comparing the outcomes for children in sample 1 with those in sample 2. Chapter 10 presents findings on the implementation of care plans and leaving care. Chapter 11 presents findings about children's wellbeing derived from the analysis of children's social care files, considering separately the three main care arrangements after the end of proceedings: in parental care; with kinship carers; and with a care order and a plan for long-term care, and wellbeing 1 and 5 years after the end of proceedings. Chapter 12 looks at the practice challenges in ensuring children's wellbeing, focusing on family contact, sibling relationships and services for children and carers and sets out recommendation for practice in these three areas.

Part 5: *Discussion and recommendations for practice*. Chapter 13 discusses the context at the end of the study, particularly relating to developments in care proceedings, children's social care and the availability of data in order to ground the study's recommendations. Chapter 14 discusses key issues arising from the study and makes recommendations about care proceedings, children's services relating to care proceedings and improvements to data so that courts and local authorities can better understand the operation, effects and outcomes of care proceedings.

Throughout Parts 2 to 5 examples are presented, drawn from the study. All names are pseudonyms and some other details have been changed to avoid any possibility of identifying any child or family included in the Study. For the same reason, the local authorities are identified only by a letter (A-F). In accordance with the agreement for the supply of Administrative Data from the Department for Education, data suppression rules (which prevent the identification of numbers below 6 in any table) are applied where the analysis draws on these data, alone or with other sources of data.

Summary answers to the Research Questions (RQs) are included in the Conclusions of Chapters 5 – 12. Summaries of key points are included at the end of each chapter, with the exception of Chapter 1.



## PART 1: THE RESEARCH IN CONTEXT

### Chapter 2 Context

#### 2.1 Introduction

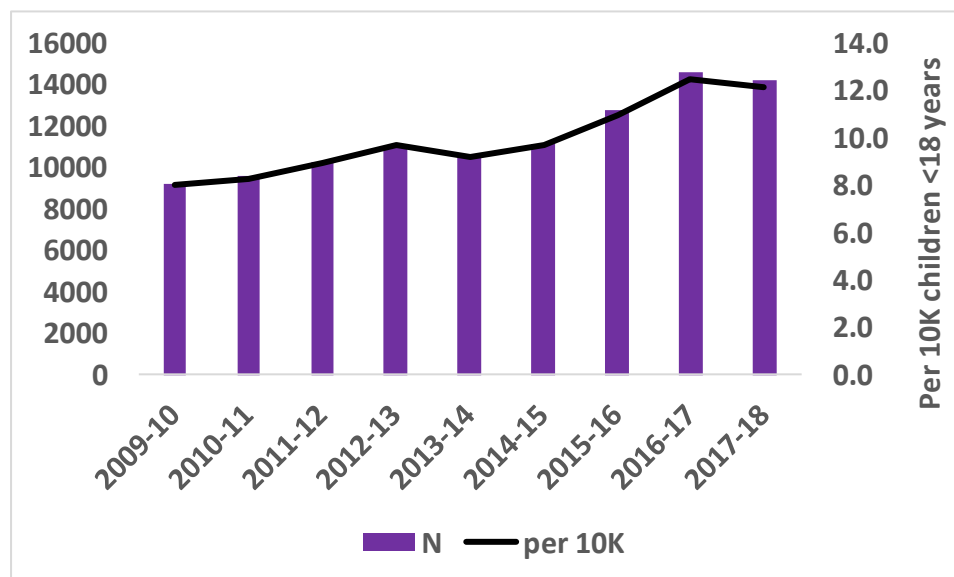
There is a long tradition in socio-legal studies of seeking to gain a broader understanding by placing law in context, identifying the various factors which operate and interact to shape the development, its practice and its effects (Twining 1997). This is particularly the case with public child care law, where the context encompasses three institutions, local authority children's services, the courts and Cafcass, each with a distinct ethos but overlapping powers, who must work together, and with families and their lawyers, to make discretionary, value-based decisions about children's wellbeing. This chapter outlines and discusses key facets of the context of care proceedings and the care of children subject to those proceedings during the study period. Having briefly reprised the context for the collection of S1 data, it summarises the similarities between the context of care proceedings in 2008-10 and in 2014-5 before examining in more detail, the contexts for the reform of care proceedings, subsequent practice, and child care and social services from 2009 onwards.

*Partnership by Law?* (Masson et al 2013), the report of the *Pre-Proceedings Study* for which the sample 1 (S1) data was originally collected, discussed the operation and impact of the pre-proceedings process for care proceedings. The context for that study was the introduction of the process following a joint review by the ministries with responsibility for Justice and Education (DFES et al 2006) as part of a package of measures intended to reduce delays in care proceedings (an earlier attempt to do so having failed), to ensure cases were completed in 40 weeks and to cut costs. The process involved a formal letter from children's services advising parents at risk of care proceedings to seek legal advice and attend a meeting where they could be accompanied by their lawyer. It was intended to divert cases from proceedings and to improve the preparation of any cases that continued to court, thus reducing the number of applications and the length of cases, and also to make applying to court more demanding for local authorities (Jessiman et al 2009). Subsequently, Cafcass piloted a version where a children's guardian also attended the meeting (Broadhurst and Holt 2012). Costs and delay were major features of the care proceedings context in 2008. New full cost court fees were imposed on local authorities, there were changes in legal aid which reduced fees for lawyers in some cases and concern in central government about the costs of legal aid, Cafcass and the courts for care proceedings.

Throughout the period to the present day, the continued increase in the numbers of care proceedings applications has been a matter of great concern, see figure 2.1. Following the death of Peter Connelly in 2007 (Jones 2014) care applications have risen, almost doubling in a decade. Increasing numbers of applications have not been matched by a commensurate increase in resources (ADCS 2018; Lord Chief Justice 2018) and have challenged the capacity

of all three services. Alongside the number of cases, attention has been focused on delay, a consequence of the inability to match supply and demand (Schwartz 1975) – delayed

**Figure 2.1: Number and rate of care proceedings applications 2009-10 to 2017-18 (England)\***



\*Source Cafcass

decisions to bring care proceedings by local authorities (Cafcass 2009; Stather 2014; *Herefordshire v AB and CD* 2018, Keehan J), delays in the appointment of children’s guardians between 2009 and 2011 (NAO 2010; Cafcass 2011) and increases in the length of time courts take to determine them (FJR 2011a, b). The costs of care proceedings have also been a concern to all three services, to the Legal Aid Agency (formerly the Legal Services Commission), who fund legal representation, including expert witnesses for parents and children, and to lawyers whose income depends on legal fees. Attempts to keep costs in check have included introducing fixed fees for some legal representation and freezing payment rates (Masson 2008), removing funding for residential assessments and reducing the hourly rate for expert witnesses (Legal Aid Agency 2013). Restrictions on legal aid for assessments and experts have shifted costs onto local authorities.

In terms of differences, reforms recommended by the Family Justice Review (2011) implemented by new legislation and court rules (PLO 2014 and Children and Families Act 2014), the appointment of a new President of the Family Division in January 2013 and the creation of the Family Court in April 2014 have resulted in major changes to the legal and practice context for care proceedings, for lawyers, local authorities, Cafcass and the judiciary. The reforms to care proceedings aimed to make cases smaller and shorter, by reducing the volume of documentation and the use of experts. Sir James Munby brought a much more direct style of leadership, communicating his ideas through a regular bulletin, the *View from the President’s Chambers*, and judgments providing ‘guidance’ to practitioners on case preparation and decisions, for example *Re B-S* (2013); *Re A* (2015); *Re N* (2015), and changed the culture in the family courts. The Family Court provided a single

court jurisdiction for care proceedings ending the arrangement, which had persisted since the Children Act 1989, whereby cases could be heard at three separate levels of court and were transferred sometimes after many weeks to the appropriate level of judge.

The Westminster Government sought to encourage more and swifter adoption from care through legislative reform, timeliness targets for local authorities and the creation of the Adoption Leadership Board. In contrast, decisions by the Supreme Court (*Re B* 2013) and the Court of Appeal (*Re B-S* 2013) approached the use of adoption restrictively. The consequence was a much more uncertain context for preparing care plans for young children who could not safely return home, and for their care proceedings (see Masson 2017).

Local authority child protection services have been somewhat re-oriented in response to Eileen Munro's review (Munro 2011a, b; 2012) and, more significantly, in response to reductions in resources. Reduced finances are a major issue for local authorities (Lepanjuuri *et al* 2018); most have had to make major cuts in non-statutory services, closing children's centres etc, curtailing preventive work and reducing grants to voluntary organisations in order to fund child protection and the care of looked after children (ADCS 2018). Austerity policies are biting on all aspects of public life. Benefit changes have reduced resources for many poor families, especially single parents; shortages of affordable housing have worsened, and some families have had to move because wages and or benefits are insufficient to secure a home where they have been living (JRF 2018). The most vulnerable families and children, which includes those in need or at risk, have been particularly hard hit by these changes (Bradshaw *et al* 2017). These matters are discussed further in sections 2.5 and 2.6 below.

## **2.2 Care Proceedings Reforms**

The Family Justice Review was not established to focus on reforming care proceedings. Rather its terms of reference required it to assess how the current system operated against a list of principles: paramountcy of children's welfare; protecting the vulnerable; personal responsibility for decisions about relationships; minimising the involvement of the court; avoiding conflict; and system efficiency and simplicity; 'and make recommendations for reform in two core areas: the promotion of informed settlement and agreement; and management of the family justice system' (FJR Terms of Reference, 2010). Nevertheless, the Review gave much of its attention to public child law. Its Interim Report concluded that major reform was needed 'to ensure better outcomes and make better use of the available resources' and this required that 'the family justice system first of all becomes a coherent system' (FJR 2011a: 6).

The Interim Report identified many failings with the care proceedings system: delays were damaging children; local authorities were not always preparing applications properly; courts were not managing cases, appointing too many experts and spending too long scrutinising cases; and court processes were complex and inefficient. It proposed the creation of a Unified Family Court with specialist judges and judicial continuity and a Family Justice Service governed by a Board with senior representatives from government departments and

the key agencies (the court service, Cafcass, the Legal Aid Agency (LAA) etc). In relation to care proceedings, it proposed that the role of the court should be stripped back, removing detailed scrutiny of care plans and focusing on managing cases to secure completion within 26 weeks, and that fewer experts should be appointed because they were a major factor in delay (FJR 2011a; and see Chapter 4 below). The proposals for care proceedings received a mixed reception (FJR 2011b and see also evidence to the Justice Select Committee 2012). Whilst local authorities were positive about changes which would reset the balance between them and the courts and accept the knowledge and experience of social workers rather than rely on court-appointed experts, some practitioners were less positive, labelling the 26-week time limit 'arbitrary' (APPGCP 2012), asserting that relying on local authority assessments would delay proceedings (Brophy et al 2012) and questioning whether shorter proceedings or more limited scrutiny of care plans could reach decisions that were in children's interests, realistic (ALC 2011) or applicable to all cases (Cafcass 2011a).

The government accepted all the Review's proposals (except the ending of court fees for care proceedings) and promised they would be legislated (Lord Chancellor 2012). A draft bill, which supported the Review's proposals for care proceedings, including the 26-week time limit and the restrictions on appointing experts, was subjected to pre-legislative scrutiny (Justice Committee 2012). The Committee was concerned about a lower level of court scrutiny of care plans but felt that courts would have more confidence in these if the quality of social work evidence and care plans improved. A revised Children and Families Bill was introduced in 2013 and considered by the Joint Committee on Human Rights (2013) without comment on the care proceedings reforms.

### *Making the reforms work*

Following the Review's recommendation of a time-limit for care proceedings and in the face of some scepticism that it could work (Evidence to Justice Committee 2012; Masson 2015), three London Boroughs set up a pilot scheme, the Triborough Project, to test whether and how care cases could be completed in 26 weeks (Beckett et al 2014a; Beckett and Dickens 2018). This established that they could be completed fairly, without shifting delay to before or after proceedings, and with outcomes comparable to those achieved previously but achieving this required good collaboration between all professionals and sufficient resources. The success of the pilot was important in convincing courts and local authorities that the reforms could be made to work.

Cafcass set about revising its procedures and practices to ensure that children's guardians were available to advise at the beginning and end of care proceedings and made a positive contribution to their operation. A system of 'proportionate working' devised in response to service pressures (Cafcass 2013a, b) was revised. Working with the Association of Directors of Children's Services, it set out 'good practice guidance' to focus guardians on providing a 'threshold analysis' of the child's needs and the local authority's actions at the start of the case and analysing the local authority's care plan at the end (Cafcass and ADCS 2013).

Very substantial work was necessary to implement the new scheme for care proceedings. A new framework, the *Public Law Outline* 2013 (PLO) was prepared, based on three or four

hearings; new court rules and Practice Directions for the new process were devised; and new templates for social work evidence and children's guardians' analyses were drafted. A system and guidance were also required to allocate cases to the appropriate level of judge. Systems were also needed to ease aspects of proceedings which tended to lead to delays, such as the disclosure of information from the police or the health service or appointing the Official Solicitor for parents who lacked capacity.

The new process kept cases smaller by restricting the content and length of evidence bundles, restricting the use of experts, shortening the process with fewer hearings and time limits. These indicated the need for further changes: in the fee structure for advocates which was partly tied to bundle size and the number of hearings; and to reduce application fees, which could not be justified if care proceedings required less court time.

Beyond new systems and documentation, the reforms created training needs. Judges had to be prepared and encouraged in their new responsibilities of 'robust case management'. In the spring and early summer of 2013, the Judicial College provided training for 600 judges who heard care cases. Sir James Munby spoke at each of these events, telling judges that the 26-week time limit had to be made to work, 'it can be met, it must be met, it will be met' (Munby 2013a). Local authorities provided training in the new process for their own social workers who, rather than appointed experts, would be responsible for providing the courts with most assessments of children's needs and parenting capacity, and completing the new evidence template.

In the summer of 2013, Munby P launched a pilot scheme implementing the new court process and time limit, the PLO 2013. All court areas were required to participate but could choose when (between June and October 2013) to start their pilot. The intention was that professionals and courts in all areas would have experience in the scheme before the Children and Families Act was implemented and difficulties could be ironed out. This pilot scheme was also the subject of research (Ipsos Mori 2014) but without any possibility that the findings could affect plans for the reforms. These were fully implemented on April 22, 2014 when the Children and Families Act 2014 and the revised Court Rules came into force.

### **2.3 Reform to the Family Justice System and the Family Courts**

The Family Justice Review was highly critical of the Family Justice System because it did 'not operate as a coherent, managed system... [and was] not a system' (FJR 2011a: 6). It recommended that a 'Family Justice Service' should be established, sponsored by the Ministry of Justice, with strong ties to the Department for Education and the Welsh Government at both ministerial and official levels to address the issues faced by the Service as a whole, including IT, resources, standards and research. The judiciary preferred an alternative arrangement with administration left in the hands of a Family Business Authority and governed by an agreement between the Ministry of Justice, the court service and the Lord Chief Justice (Wall 2011). The Review also proposed the creation of a Family Court and stronger judicial leadership and management to support consistency and improve performance amongst the judiciary.

Sir Nicholas Wall, President of the Family Division between 2010 and 2012, acknowledged that reforms were required to make court processes work effectively and consistently: the 'cultural change necessary for the judiciary [was] immense' (Wall 2011: 24). Consequently, he appointed Ryder J to prepare a judicial response to the Review and make proposals for the modernisation of family justice (Ryder 2012a). These involved strengthening both judicial management to secure efficient use of judicial resources by enhancing the role of the designated family judge (DFJ) and the judges' role as case managers so that each judge could determine the course of their cases by maintaining judicial continuity. The government accepted that there was 'an undeniable case for change' (MoJ and DfE 2012: 7) and the proposals of the Review. The Family Justice Board was set up in March 2012 with David Norgrove, who had led the Review, as its Chair. The Board included representation from the Department for Education, the Welsh Government, Cafcass, Cafcass Cymru and the Association of Directors of Children's Services as well as the courts service (HMCTS). Local boards were established in each court area to drive interagency collaboration and court performance, with representatives from key stakeholders. The judiciary had only observer status on the boards and could therefore hear about policy developments but not influence them (see Doughty and Murch 2012). The Family Court was established by the Crime and Courts Act 2013 from April 22, 2014.

The Family Justice Board's vision was 'a family justice system that effectively supports the delivery of the best possible outcomes for all children who come into contact with it' (FJB 2013: 9). It planned an ambitious programme of work, monitoring local performance, increasing interagency co-operation and supporting improvement in the family courts, particularly those with the greatest delays. It adopted new KPIs (key performance indicators) for family cases, including the average duration of completed care proceedings (KP1) and the proportion of care cases completed in 26 weeks (KP2). It promised to have 'developed, monitored and reviewed a framework of the outcomes experienced by children who come into contact with the family justice system' (para 15) by April 2015. The Board was supported by advice from two other organisations, the Family Justice Council and the Family Justice Children and Young Persons Board, a group of approximately 50 young experts by experience, organised and supported by Cafcass.

Organisation of the work of the family judiciary remained a matter for the Lord Chief Justice and the President of the Family Division. Each court area was led by a Designated Family Judge (DFJ) with responsibility for 'promoting the efficient and effective operation of listing, case management and best practice' amongst all levels of the family judiciary (Judiciary n.d). In 2013, over half the DFJs were new (or new to the areas they led), encouraging a new, more active, approach. Within each Family Court there was a small team of judges and a magistrates' legal adviser with responsibility for allocating cases to different judges according to the perceived demands of the case and the experience of the judges. The aim was to ensure that each case was managed by one (or two) judges throughout, with these judges hearing any contests (President of Family Division 2013a, b; HMCTS 2013). In practice, despite recognition of the advantages of judicial continuity, arrangements for this were not prioritised and varied widely. As a consequence of these arrangements, there was

a marked change to the work of family magistrates - they were allocated fewer care cases and more disputes between parents about arrangements for contact with children.

Alongside the challenges created by the Family Justice Reforms, including the modernisation programme, the family courts have also had to deal with the withdrawal of legal aid from April 2014, which has resulted in a large increase in unrepresented parties in disputes over arrangements for children. Although the number of cases initially declined it has increased markedly since 2015. Judges have been faced with distressed parents, who are unable to present their case clearly, do not understand the law or the court's approach to disputes between parents. Although parents are still able to access non-means, non-merit-tested legal aid for care proceedings, relatives seeking, or exercising, party status were subject to tighter means-tests making it less likely they would obtain public funding. Ending most family legal aid has had a marked effect on the availability of legal services. Legal aid changes were a major problem for solicitors' firms providing advice on family law (Law Society 2014). Firms downsized or closed; solicitors were replaced by unqualified paralegals; and some lawyers refocused on care work where legal aid was still available and the number of cases was increasing (Justice Committee 2015).

The reforms to care proceedings were implemented alongside substantial changes to the structures for the management and delivery of family justice and to funding. It remains to be seen how far these have resolved issues of inefficiency and inconsistency. Whereas systems were put in place to monitor the duration of cases in court areas, comparable systems were not developed for court decisions.

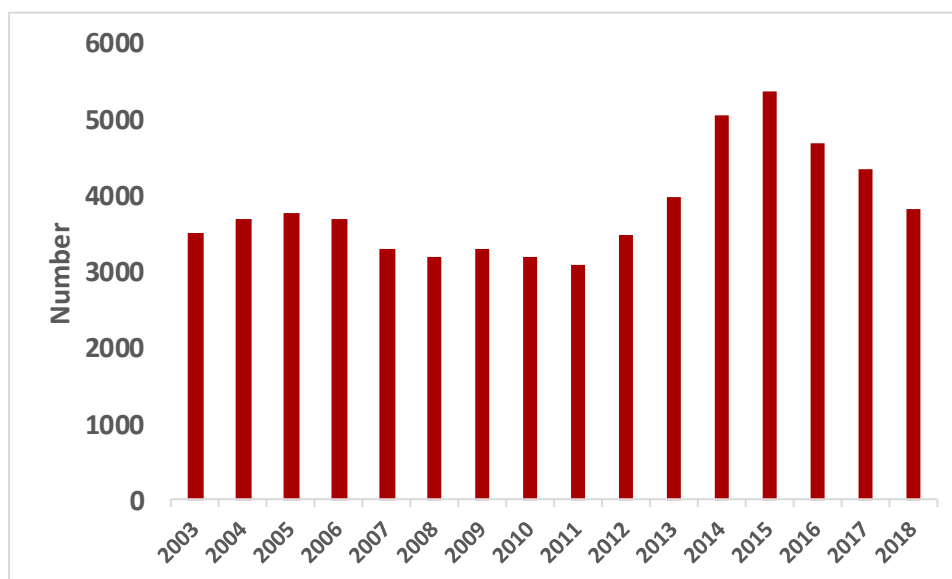
## **2.4 Changes impacting on adoption and special guardianship**

### *The English government's approach and legislative reform*

In 2011, the Westminster Government published its plans for reform of the adoption process, *Action plan for adoption: Tackling delay* (DfE 2011b) with the aim of reducing barriers and delays so that more children who had been removed from their parents and could not return to them could be placed with adopters more quickly. A series of research studies undertaken as part of the *Adoption Research Initiative* (Thomas 2013) provided a foundation for reform but it was also a political enterprise with Ministers (Gove 2011; Timpson 2013) and the Prime Minister promoting the idea of *more loving homes, more quickly*. Amongst concerns about practice were variations in local authority use of adoption, delays within local authorities and an increase in the number of children subject to placement orders without a corresponding increase in recruitment of adopters. One response was to publish 'adoption score cards' comparing the percentages of children leaving care by adoption in each local authority and the time local authorities took over various stages in the adoption process, including to approve prospective adopters (DfE 2012b). Another was to propose legislation removing the duty on adoption agencies to consider the child's 'religious persuasion, racial origin and cultural and linguistic background' when making placements (ACA 2002, s.9(5)) and introducing 'fostering for adoption' (FfA) so children could be placed with prospective adopters earlier, before a placement order was made.

In 2013, there was a second green paper: *Further action on adoption: Finding more loving homes* (DfE 2013a). This made clear that the Government saw adoption as the best option for children who were suffering, or at risk of, significant harm and could not be brought up in their families: 'This Government's priorities for reforming services for children in care are to ensure that children who need to enter care do so promptly and that the care they then receive does a much better job of helping them overcome the harm and disruption they have experienced earlier in their lives.' (para 4). Although the number of adoptions had risen since 2008, see figure 2.2, recruitment of adopters had not kept pace and there were still over 4000 children waiting for adoptive placements. The paper acknowledged that the financial cost of keeping children in foster care was an additional incentive for increasing adoption. Local authorities were given extra funding to support adoption reform with part of the £50 million 'ring-fenced' to address structural problems in adopter recruitment (Timpson 2013). There were also plans to give prospective adopters more rights and to improve access to post adoption support (DfE 2012c). These plans were developed further in the following years, assisting adopters to obtain funding for therapy for adopted children, beyond the very limited services from the NHS, through the Adoption Support Fund.

**Figure 2.2: Adoptions in England 2003-2018\***



\*Source: Department for Education Looked After Children Statistics

A draft bill was published and scrutinised by a House of Lords Committee in 2012 (HL Committee on Adoption Legislation 2012). The Committee supported adoption without delay and proposed that local authorities should have to consider plans for adoption sooner after a child entered care (para 37) and be under a duty to promote fostering for adoption (para 27). However, they opposed changes to the duty to consider the child's background in case this led to no weight being given to important aspects of the child's identity. Despite these comments the Government's draft provisions were included in the Children and Families Bill presented to Parliament. The bill provided for personal budgets allowing adoptive families to buy support services and made changes to the provisions relating to



post-adoption contact. The adoption provisions were enacted alongside the reforms to care proceedings but the clause removing the duty to consider the child's identity in adoption placements was not applied to Wales (CFA 2014, s.3).

### *Adoption and the Courts*

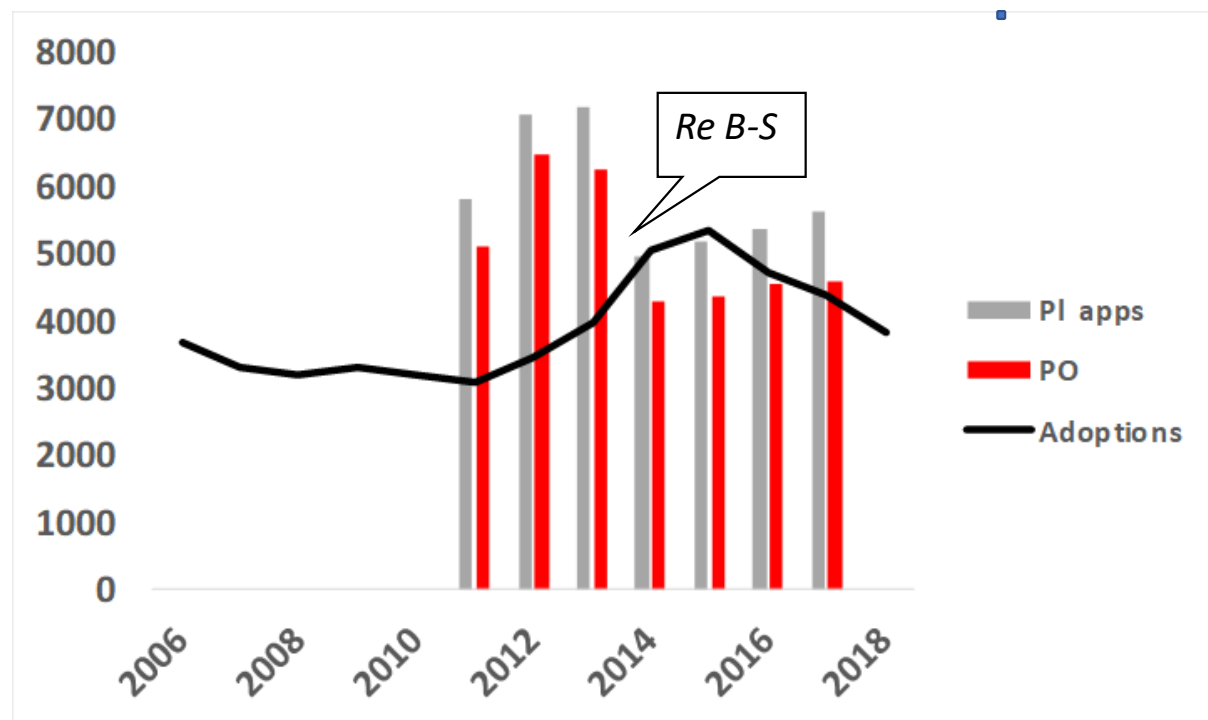
Adoption was viewed less favourably in the higher courts. In judgments in a case relating to the tests for granting a care order, judges in the Supreme Court stressed that intervention in family life had to be 'proportionate' to comply with the European Convention on Human Rights, art 8(2) and so adoption plans should only be approved 'as a last resort, where nothing else will do.' Although the case (*Re B* 2013) did not relate to adoption (Doughty 2015), the majority accepted that there was no prospect of the child returning to her parents and the care order was upheld, these comments were used as justification for the Court of Appeal hearing an appeal by a parent in an adoption case, *Re B-S* (2013). The appeal in *Re B-S* was unsuccessful, the decision by the judge at first instance had been correct. Nevertheless, Munby P, giving the judgment of the Court, took the opportunity to set out *requirements* for care plans for adoption and placement orders. Social workers and children's guardians had to identify all realistic options for the child's care and provide a holistic assessment of the pros and cons of each for the court. Judges had similarly to state fully their reasons for making a placement order rather than any alternative. Whilst this could simply have been a general statement of the existing law, the reference to the Supreme Court's decision in *Re B*, Sir James Munby's position as President of the Family Division, the language used and the publicity given to the judgment by its immediate distribution to all Designated Family Judges, made it clear that this case was intended to effect a more restrictive approach to adoption.

The decision in *Re B-S* was immediately the subject of both supportive and critical commentary from practitioners and academics (for details see Masson 2017). It was seized upon by parents and their lawyers as a basis for arguing against placement orders, seeking their revocation and appeals. Local authorities revised the social work evidence template, which had been developed for the PLO and re-trained staff to prepare 'Re B-S balance statements'; some began to take a more cautious approach to seeking placement orders. Cafcass made similar adjustments to its templates, and some guardians revised their views about the appropriateness of adoption. Immediately following *Re B-S*, the number of placement orders fell, despite an increase in care proceedings, a trend that has largely continued, see figure 2.3.

The Adoption Leadership Board (ALB), which had been established to drive forward the government's plans for increasing adoptions, was particularly concerned about the impact of *Re B-S*. It commissioned a leading lawyer to prepare a document to advise local authorities what the law required (ALB 2014). This document, known as *the myth buster*, clarified that *Re B-S* had not changed the law. The ALB hoped to get judicial support for this document, which was discussed with the President. However, in another case, *Re R* (2014) which was directed to the Court of Appeal to provide an opportunity for the court to clarify

the test for a placement order, *Munby P* made it clear that the ALB's guidance applied to social workers and had 'not been endorsed by the judiciary' (para 70).

**Figure 2.3: Placement order applications, orders and adoption (from care) orders\* 2006-2018**



\*Placement applications and orders figured for England and Wales (source Family Court Statistics (MoJ 2018a); Adoption orders England only (source DfE (annual)).

This whole episode demonstrated the fierce independence of the judiciary and their intention to shape family policy. Although this could be justified by reference to the Human Rights Act 1998, the Adoption and Children Act 2002 had specifically been drafted with the ECHR art 8 in mind: adoption could only be granted without parental consent where the child's welfare 'requires' this (s.52(1)(b)). Moreover, a decision of the European Court of Human Rights, *YC v UK* had found the law to be Convention compliant. Whilst an independent judiciary is essential in a democratic society, one that is insensitive to the need for consultation and co-operation puts the effective functioning of family justice at risk.

### *Special Guardianship*

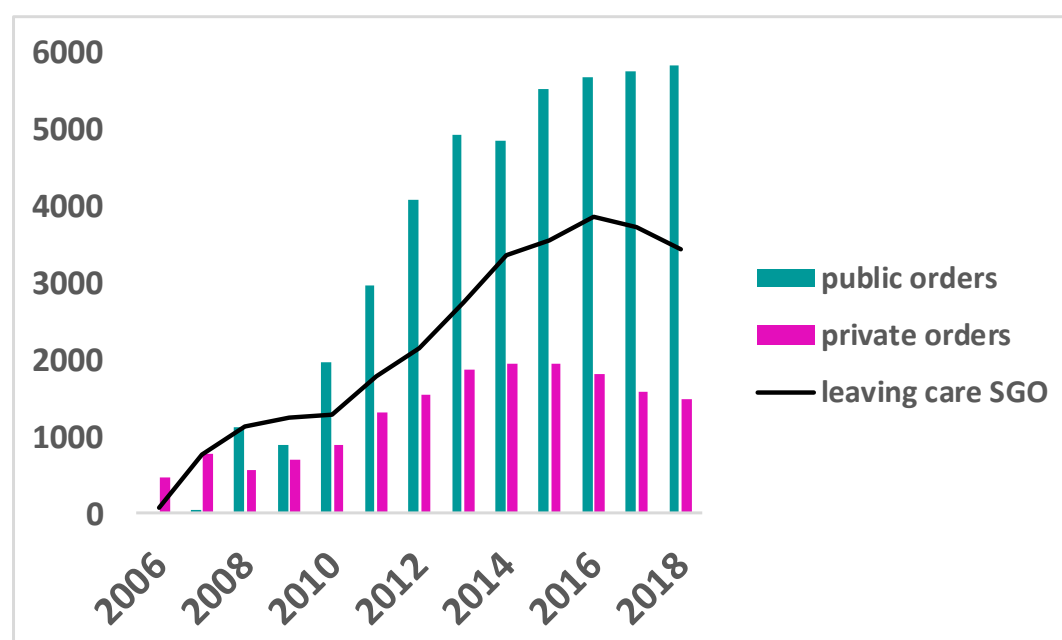
Special guardianship was introduced in 2005 to provide permanent family care for children for whom adoption was unsuitable because they had strong, beneficial relationships with parents or family, a strong sense of their own identity or were being cared for by their relatives, and for children in care with established relationships with foster carers who wanted to end their links to the local authority (Wade et al 2014). Although there was some expectation that infants would continue to be adopted, many infants and young children

who were subject to care proceedings had grandparents or aunts/uncles willing to care for them.

The legal framework for special guardianship is markedly different from that for adoption, although both are intended to provide children with permanent care and give carers parental responsibility. Special guardianship lasts only until the child reaches the age of 18 years and does not make them a permanent member of the family as adoption does. Unlike adoption an SGO can be revoked although there are barriers to such applications by parents (s.14D). A report has to be provided before a court can make a SGO (Children Act 1989, s.14A(11)) but there is no system comparable to the preparation and approval for either adopters or foster carers, nor any requirement for a period caring for the child before the order is made. Moreover, support for special guardians was more limited than for adopters; special guardians have a right to an assessment but not to services, and financial support is means-tested and subject to review (s.14F). Where special guardians live outside the local authority area, the original care authority remains responsible for support for three years after the order is made. Wade and colleagues found that a majority of special guardians responding to a survey and caring for children who had been looked after received some regular financial support and a third some therapeutic support for the child (Wade et al 2014).

The number of special guardianship orders has increased markedly since 2010 with public law orders, that is those made in care proceedings, dominating. Each year from 2014 over 3000 children have left care because an SGO has been made, see figure 2.4.

**Figure 2.4: Public law and private law SGOs and Children leaving care by SGO 2006-2018\***



\*Sources Family Court Statistics and Judicial Statistics, which cover England and Wales; DfE LAC Statistics for leaving care (England only).

Concerns about limited assessments of potential SGO carers (Wade et al 2014) and the circumstances in which SGOs were being made in care proceedings, particularly after the Family Justice Reforms (RiP 2015) led to the Department for Education undertaking a review (DfE 2015e). This concluded that there was a need for more robust assessment, greater consistency in practice and improved support for special guardians. These reforms were taken forward through the Children and Social Work Act 2017, regulations and new guidance (DfE 2016). New regulations were also made in Wales extending special guardianship support (SI (W) 2018 No 574). The Adoption Leadership Board was given a new remit to include special guardianship and renamed. Local authorities and schools were given new duties to promote educational achievement for children who had left care through special guardianship (CSWA 2017, ss 4-6) and Pupil Premium, additional funding to schools in England for vulnerable children, was extended to them. The Adoption Support Fund, which provides funds for essential therapeutic services was also opened to special guardians but not renamed.

## **2.5 Austerity: the context for families and local authorities**

The period between the start of our first sample, in 2009, and the end of our second, in 2015, saw major changes in the family justice system, as described above. It also saw significant changes in social work policy and practice; and behind all of these, major policy and political changes in the role of the state in welfare provision and support for families. The two samples fall across the end of the Labour government of 1997-2010 and the period of the Coalition government from 2010-15. The Coalition government's austerity programme was intended to reform Britain's finances by making significant reductions to public spending, but the aim was not solely economic; it also aimed to reduce the role of the state in providing welfare services, with the emphasis on individuals and families taking more responsibility for themselves, and an increasingly important role for businesses and charities in the organisation and delivery of public services.

Austerity has had (and at the time of writing continues to have) a dramatic and often damaging impact on the families and children who need social care services, and on local authorities and their partner agencies (and indeed on the courts, as described above).

The impact is shown in the series of 'Safeguarding Pressures' reports published by the Association of Directors of Children's Services (ADCS 2010-2018). The fifth of these reports, published in late 2016, provides an overview of the key developments over the period 2009-15, the timespan between our two court samples. It notes an increase in the prevalence and complexity of family problems, especially domestic violence, parental mental ill-health, drug and substance misuse, child sexual exploitation and trafficking, neglect, poverty, on-line abuse and homelessness. It also notes the reductions in resources, challenges in recruiting and retaining staff, and the high costs of commissioning and managing services provided by external agencies. It concluded that local authorities had been able to contain some of the great pressures on their services but sensed that a tipping point was being reached (ADCS 2016). Two years later the sixth report in the series highlighted a similar range of issues,

holding that the tipping point had now been reached (ADCS 2018) (see Chapter 13 for a discussion of the context at the end of our study).

### *Welfare changes and child and family poverty*

A succinct and scathing summary of the welfare changes introduced since 2010 was given by the UN special rapporteur on extreme poverty and human rights, Philip Alston, who undertook a fact-finding tour of the UK in autumn 2018. He drew attention to the impact of benefit reductions and caps, the tightening of eligibility criteria, and cuts to local authority budgets and other services. As regards the impact on families and individuals, he concluded that:

‘Capping benefit amounts to working-age households, limiting support to two children per family, reducing the Housing Benefit for under-occupied social housing, and reducing the value of a wide range of benefits, have all made it much harder for people to make ends meet’ (Alston 2018: 12).

Alston stated that the driving force behind the changes ‘has not been economic but rather a commitment to achieving radical social re-engineering’ (p 2), and goes on to say that whilst ‘some good outcomes have certainly been achieved’

‘... great misery has also been inflicted unnecessarily, especially on the working poor, on single mothers struggling against mighty odds, on people with disabilities who are already marginalized, and on millions of children who are being locked into a cycle of poverty from which most will have great difficulty escaping.’ (Alston 2018: 2)

The increase in poverty has profound implications for social care services and for the families who may require them. The detrimental effect of poverty on children’s and families’ welfare is well known. Ridge (2009) categorises four main types of effect. There are psychological effects such as loss of self-esteem, anger, depression and anxiety; physical effects, on people’s health; relational effects, on social and personal relationships; and practical effects, as poverty limits people’s choices and options for parenting (Ridge 2009: 19).

Child poverty has been rising since 2011-12, and there were 4.1 million children living in poverty in 2016-17, an increase of half a million in the preceding five years (JRF 2018). Furthermore, there were four million working people living in poverty, a rise of more than half a million over five years; and the increase in in-work poverty has been driven almost entirely by increasing poverty among working parents (JRF 2018). Homeless and the lack of adequate, affordable, secure housing has been identified as a particular source of stress for families (CCE 2019).

Research on the link between poverty, child abuse and neglect has been reviewed by Bywaters et al (2016). The review notes that poverty is neither a necessary nor sufficient factor for child abuse and neglect (i.e. not all poor children are maltreated; not only poor children are maltreated), but there is a ‘strong association’ between families’ socio-economic circumstances and the chances that their children will experience maltreatment

(p 4). This might arise through direct effects, such as material hardship or lack of money to buy in support, or indirect effects such as parental stress and neighbourhood conditions. The authors describe the interactions between poverty and other contributory factors as ‘complex and frequently circular’:

‘For example, poverty increases the risk of mental ill-health and mental ill-health increases the likelihood of poverty. Parental substance use accompanied by poverty is more likely to lead to contact with child protection services than substance use in a position of affluence’ (Bywaters et al 2016: 4).

Bywaters et al (2018) give a striking account of the relationship between deprivation rates and the rates of children in care or on child protection plans. There is a clear gradient for both, with poorer areas tending to have more children in care or on plans, and wealthier areas fewer. They found that a child living in the most deprived 10 per cent of communities in England is 11 times more likely to be in out-of-home care than a child from the least deprived tenth, and 13 times more likely to be on a child protection plan. Such a trend is not a surprise, and not new (e.g. see Bebbington and Miles, 1989). But whilst there is no doubt that poverty is a crucial factor for children coming into care, it is also important to appreciate that it is not the only one, and that there is debate about its relative impact compared to other factors (e.g. see Morris et al 2018; NAO 2019; Dickens et al 2007).

The quality and the culture of local authority services are also vital. A report by the What Works Centre for Children’s Social Care in November 2018 noted that whilst the rate of children in care has risen nationally (studying the period 2012-13 to 2016-17), it has not gone up in every local authority. Over this time period, 60% of local authorities in England saw an average increase in the rate of children in care, 4% saw no change and 36% had a decrease. They conclude:

‘Put simply, good services help local authorities reduce the number of children in care. It seems that it is not about either tackling broader social causes or ensuring better children’s services – it is about doing both.’ (WWC-CSC 2018: 30)

Having said that, the authors note that ‘the levers of macro-economic change are not in the control of children’s services, whereas practice quality is to an extent’ (p 30). The debates about the quality of practice are discussed further in section 2.6 below, and Chapter 4.

It is also worth noting that, when it comes to care proceedings, the outcomes are not simply a matter of local authority practice and culture. Research by Harwin et al (2018) has shown substantial regional differences in the use of supervision orders and care orders, highlighting that court practices and cultures are also important: for example, 47% of final orders made in the North West of England in 2016-17 were care orders compared to 28% in London. The North West had the lowest rate of supervision orders (9%) whilst London had the highest (25%). Our study also found notable differences between authorities in the pattern of court orders, even though all our authorities were in the southern part of England and Wales – discussed further in Chapter 9.

*Cuts to budgets of local authorities and partner agencies*

Looking in more detail at the impact of austerity on local authority services, the National Audit Office has calculated that local authorities in England experienced a real-terms reduction of government funding of 49% between 2010-11 and 2017-18 (NAO 2018). These cuts have come at the same time as substantial increases in demand, especially for homelessness services, child and family social care, and adult social care, and increases in statutory responsibilities (e.g. duties to children in care and those leaving care, and duties under the Care Act 2014). In this context, local authorities have had to focus their spending on services they are statutorily obliged to provide, and make cuts in other areas, notably preventive and early intervention services, such as children's centres (Walker 2017; NAO 2019).

The scale of the financial challenge over the timespan of the study is captured in a report by Action for Children, the National Children's Bureau and the Children's Society (2017). They found a real-terms decrease in central government *funding* for children and young people's services of £2.4 billion, and a drop in local government *spending* on these services of £1.6 billion. That is, in 2010-11 the funding and the spending matched, at £10 billion (in 2017 prices); but by 2015-16, central government funding had fallen to £7.6 billion, whilst local authority spending was £8.4 billion (Action for Children et al 2017: 2). The overspend had been met by diverting funds from other services or using reserves, shifting expenditure from early intervention to late or crisis intervention. The report called for urgent extra funding, but with the clear requirement to use it to improve earlier intervention. 'Early intervention' is discussed further in section 2.6 below.

Cuts in budgets to partner agencies have also been damaging for the services available to children and families. The state of child and adolescent mental health services (CAMHS) has been a particular cause of concern. A House of Commons Health Committee report in 2014 identified 'serious and deeply ingrained problems' at all levels of provision from early intervention through to inpatients (Health Committee, 2014: 3). Services had been hit by insecure funding streams and budget cuts, plus increases in demand, forcing parents into 'battles' to get services, long waiting lists and 'unacceptable variations' in service-quality around the country. The transition from children's mental health services to adult services was described as a 'cliff edge' (p 4).

So, the wider context for children and families since 2010 has been marked by increasing levels of hardship for the more vulnerable, and substantial cuts in the availability of universal and targeted support services. How this has played out for social work practice with children and families is the subject of the next section.

## **2.6 The local authority social work context**

As regards changes to local authority social work with children and families, the timespan of our project is again significant. The impact of austerity measures has been almost overwhelming, as described above, and there have been strong calls for social workers to be more sensitive to the impact of poverty and more supportive to families (e.g. Featherstone et al 2018; Gupta 2017; Morris et al 2018). At the same time there are the legal duties, and the social and political pressures, to protect children from harm – exemplified in high profile

cases such as Baby Peter (Peter Connelly), which was prominent in 2008-09, at the start of our first study.

### *The Munro Review*

The case of Peter Connolly hit the news headlines in November 2008, when the trial of his mother took place. The media, notably the *Sun* newspaper, reported the story with fury, directed particularly at the social workers involved and the director of Haringey children's services, Sharon Shoesmith. In its wake the Secretary of State for the Department for Children, Schools and Families, Ed Balls, ordered the removal of Shoesmith from her post, although she later won an appeal for unfair dismissal (*R (Shoesmith) v Ofsted and others* (2011); and see Jones 2014). Balls also commissioned a review of the child protection system in England, by Lord Laming, which was published in spring 2009 (Laming 2009). It found the policies and systems basically sound but called for a much sharper focus on child protection in practice, through agency structures of support and accountability, inter-agency working, training and social work practice. It called for 'a change in culture across frontline services that enables them to work more effectively to protect children' (p. 83).

The number of care proceedings increased sharply from November 2008, as shown earlier, although as discussed in our report on the first study, this was not solely due to the Baby Peter case. A number of other factors came into play as well, including a greater awareness of the long-term harm caused by neglect and emotional abuse and the launch of the 2008 Public Law Outline (PLO) (Masson et al 2013: 16).

Another consequence of the Baby Peter case was the creation of a 'social work task force' to advise the government on a reform programme for social work. It produced three reports in 2009, calling for a reduction in bureaucracy, and better training, working conditions and supervision for social workers (SWTF 2009a, b, c). Within six months of the final report, the newly-formed Conservative-Liberal Democrat coalition government commissioned Professor Eileen Munro to undertake an independent review of the child protection system in England. The aim was to ask how social workers could be helped to make good professional judgments about children, without unnecessary bureaucracy and regulation, but with transparency and accountability (Gove, 2010).

Munro produced an initial report in October 2010, an interim report in February 2011 (Munro, 2011a), her final report in May 2011 (Munro, 2011b; see also the government's response, DfE 2011c), and a progress report in May 2012 (Munro, 2012). Munro's review ran alongside the Family Justice Review, discussed earlier, and each noted that they had been in communication; however, whilst their conclusions had some elements in common, such as a call to re-value social work expertise, there were notable differences. Whilst the Family Justice Review proposed a series of procedural reforms, tighter court control and a fixed time limit for care proceedings, the Munro report called for a reduction in proceduralised systems and fixed timescales, and a change of culture across the multi-agency child protection system. The focus should be on the child's voice and the outcomes for him/her, rather than procedural compliance; and learning and improvement rather than



blame, with greater recognition of the complexity and uncertainty of the work. The challenges of achieving this change are discussed further in Chapter 4.

### *Child protection*

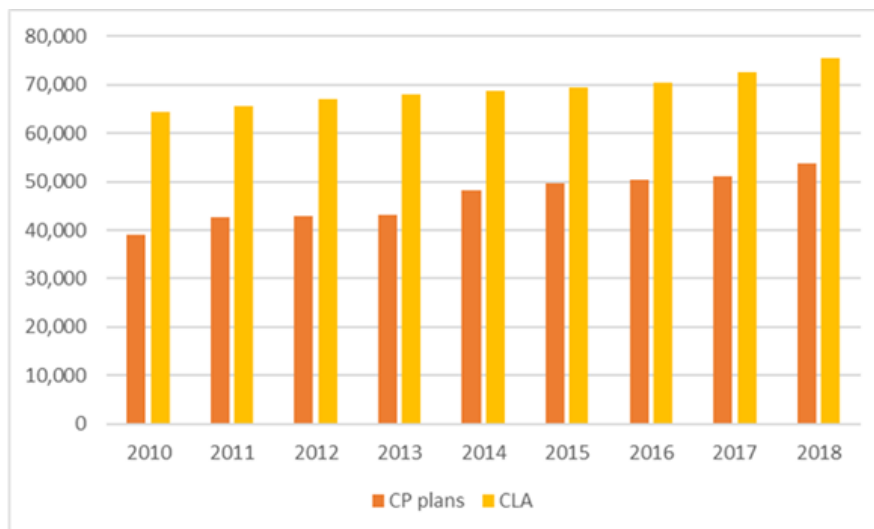
The political and professional wish for more effective child protection practice is compounded by the press coverage of distressing cases (e.g. the cases of Daniel Pelka in 2012, Ellie Butler in 2013, Shanay Walker in 2014), and criticisms that the lessons of serious case reviews are still not being learned (Wood 2016). Furthermore, the scope of harm and protection has arguably widened over the period of this study. New risks to children have become matters of public and professional concern, such as online abuse, criminal sexual exploitation, ‘county lines’ exploitation of vulnerable young people for drug-running, and radicalisation by extremist groups. The child sexual exploitation cases in Rochdale (RBSCB 2013) and Oxfordshire (OSCB 2015) were especially prominent. Such cases have led to reform of the arrangements for multi-agency child protection work (Wood 2016), and a new concept of ‘contextual safeguarding’ to cover extra-familial risks to children (*Working Together*, HM Government 2018).

In this context, there have been increases in the number of children on child protection plans, and children looked after by local authorities (as well as the increase in the number of care proceedings, discussed earlier) – although it is important to recall that, just as with care proceedings, some local authorities have reduced these numbers, and at local authority level there is likely to be year on year variation. Also, there have been increases in the child population during the last two decades; whilst the number of secondary age pupils changed little between 2010/11 and 2017/18, the population of primary pupils increased by more than half a million (DfE 2019c).

There are intense debates about the factors behind the changes, how much they are to do with increasing need, newly identified needs, underlying deprivation, reductions in support services, or local practice. The National Audit Office (NAO 2019) focusing on rates of new child protection plans, rather than rates of children in care, holds that deprivation accounts for only 15% of the variation between authorities, with other characteristics such as local custom and practice accounting for up to half. The importance of local custom and practice is a well-known finding from research into children’s social care over many years, and is discussed further in Chapter 4.

On 31 March 2010, there were 39,100 children on child protection plans in England; by 31 March 2015, the number had risen to 49,700, and it has continued to rise since then, reaching 53,790 on 31 March 2018 (DfE 2018c, and previous editions of this annual report). The number of children looked after rose from 64,400 on 31 March 2010 to 69,540 on 31 March 2015, and then even more steeply to 75,420 on 31 March 2018, see figure 2.5.

**Figure 2.5: Children on child protection plans and children looked after, England, 2010-18**



Sources: DfE *Characteristics of Children in Need* and *Children Looked After by Local Authorities* annual reports

### *Early intervention and 'strengths-based practice'*

Early intervention emerged as a dominant theme in social policy in the early years of the Coalition government, although it has roots going back to the New Labour period, with its 'social investment' approach. The Coalition commissioned an independent review which produced two reports in 2011 (Allen, 2011a, b) and set up the Early Intervention Foundation in 2013. This aims 'to support local agencies and national policy makers to tackle the root causes of problems for children and young people, rather than waiting to address issues once they are embedded' (Messenger and Molloy, 2014: 5).

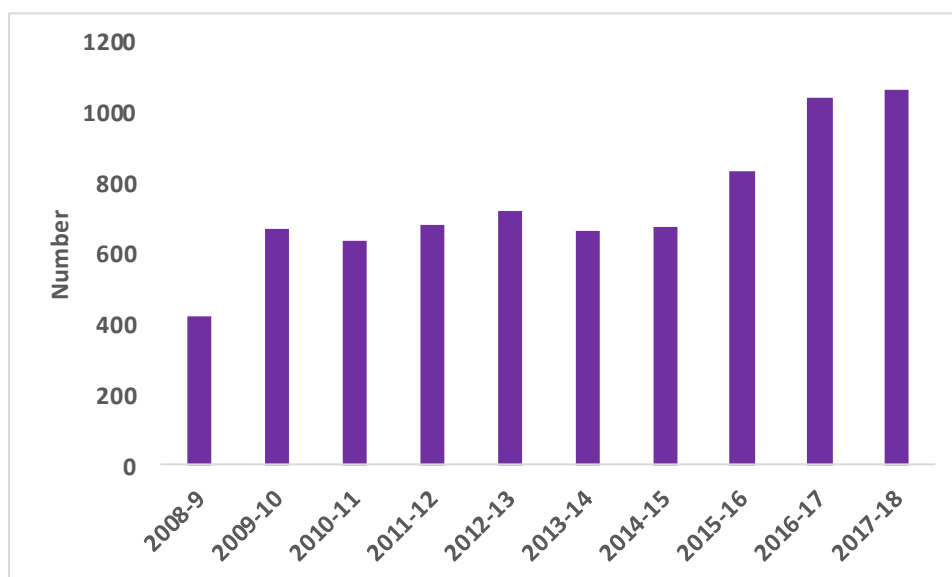
That seems an unimpeachable goal, but in the context of austerity and the political project that lies behind it – of reducing the role of the state and promoting greater individual responsibility – the concept is highly ambiguous. The critical view, argued by Featherstone et al (2014a), is that the combination of early intervention, child protection and austerity creates a 'perfect storm' that has led to the increasing numbers of children subject to child protection plans, court proceedings or being in care. The counter-argument (e.g. Axford and Berry 2018) is that early intervention can play a positive role in protecting children and supporting families. But both sides of the debate want to see greater use of 'relationship-based practice', working alongside families, helping them to find and build on their strengths.

A particular strengths and relationship-based model of social work with children and families known as 'Signs of Safety' (SoS) is being increasingly adopted in the UK. Devised in Australia in the 1990s (Turnell and Edwards 1999), it has become popular internationally. It was piloted in ten local authorities in England as part of the government's innovations programme for children's social care (Munro et al 2016; Baginsky et al 2017), but was adopted in other authorities at the same time, and has continued to spread; by summer 2018, well over half the statutory children's services departments in England were using it (Signs of Safety 2018). It had been adopted by three of the local authorities in our study at the time of our research interviews.

Despite its popularity and strong support from its adherents, evaluations have been cautious. The action research project by Munro et al (2016) emphasised the importance of direct practice and local leadership and recognised the challenges of breaking with the ‘old’ ways of doing and thinking about things, the organisational and policy context. The DfE evaluation by Baginsky et al (2017) found that social workers and managers in the pilot areas were ‘overwhelmingly positive about the benefits of SoS as a practice framework’ (p. 12) and generally positive views from families. Again, the challenges were: changing the organisational context, with a real and well-resourced commitment to the new ways of working; sufficient skilled staff; and effective links with partner agencies. A review by the What Works Centre for children’s social care in 2018 concluded that there was evidence to suggest that Signs of Safety ‘can lead to positive engagement with parents, children, wider family and external agencies’, but there was ‘little to no evidence to suggest that Signs of Safety is effective at reducing the need for children to be in care’. The report clarifies that ‘lack of evidence’ is not the same as evidence that it does not have this effect, but it does show the need for more research and a much stronger evidence-base (WWC-CSC, 2018: 4-6). Turnell et al (2018) responded in defence of the approach but accept that there is an urgent need for research.

## 2.7 The context in Wales

**Figure 2.6: Number of s.31 applications in Wales 2008-9 to 2017-18\***



\*source Cafcass Cymru

Wales has the same court system as England; The family court and the PLO operate there, and Welsh Government is represented on the Family Justice Board. A separate organisation, Cafcass Cymru, provides assessments for the courts but the expectations of its guardians are no different from those in England (Cafcass Cymru 2016). The Children Act 1989 and Adoption and Children Act 2002 were enacted before devolution and apply to Wales but children’s social care is a devolved matter; the legislation and accompanying guidance is being re-shaped in line with policies adopted by the Welsh Government. However,

provisions remain closely aligned; the pre-proceedings system was introduced in Wales in 2008 and was revised with the PLO reforms (Welsh Government 2014). As in England, care proceedings have risen very substantially, see Figure 2.6., above.

The Social Services and Wellbeing (Wales) Act 2014 came into effect in April 2016. This Act replaced Part 3 of the Children Act 1989 in Wales: s.17 was replaced by powers and duties in Part 4 of the 2014 Act, particularly ss 37-39; and s.20 was replaced by s.76 of the 2014 Act. (Unless stated otherwise, our report uses the Children Act 1989 terms because these applied when the data were collected.) The 2014 Act imposed new duties on local authorities to assess outcomes by explicitly requiring those exercising functions under the Act to have regard to the UN Convention on the Rights of the Child (s.7) and requiring Ministers to set out the outcomes expected for people in need receiving services and to publish a code to support the achievement of these outcomes (ss 8 and 9). The Wellbeing of Future Generations (Wales) Act 2015 encourages a long-term focus on key problems affecting Wales such as poor health and poverty as well as sustainable development and climate change. A wellbeing statement on social care has been published (Welsh Government 2016).

Historically, a higher proportion of children have entered care in Wales than in England and the rate of adoptions from care has been lower. The Welsh Assembly held an inquiry into adoption in 2012, which identified inconsistent practice, problems in recruitment of adopters, lack of support and delay; it recommended setting up a National Adoption Service to strengthen and improve practice (NAW 2012). The service was established in 2014; adoption arrangements are made by the 22 Welsh local authorities and voluntary agencies working through 5 regional collaborations. Wales has not seen the substantial decline in adoptions experienced in England, nor the increase which preceded it; since 2014-15 there have been over 300 adoptions each year in Wales (NAS Annual Reports).

## **2.8 Conclusion and summary**

In summary, the court and social work picture over the period of our study is one of great change and controversy. The introduction of the 26-week limit for care proceedings is the key change between 2009-10 and 2014-15 that underlies the research project, but of course much else has changed too (and continues to change). Three key features stand out. First, the profound impact of austerity policies on local authorities, partner agencies, the courts and not least, families themselves. Secondly, the tensions between government policy to promote adoption and court decisions, notably the key judgments of *Re B* (2013) and *Re B-S* (2013). Thirdly, there is the substantial increase in the numbers of children subject to the more overtly coercive measures of child protection plans and care proceedings, but there is strong debate about the causes and what should be done about it, and local variation behind the national statistics. Additionally, in Wales, devolution has given the Welsh government power to make its own law and policy in the area of children's social care, and it has increasingly adopted distinct policies on children's rights, whilst continuing to apply the same laws and procedures on care proceedings.

In September 2016, towards the end of our research project (after we had collected our second sample and while following the cases through), the rise in the number of court cases was described as a 'crisis' by Sir James Munby (Munby 2016). The remark led to the establishment of the Care Crisis Review, 2017-18, facilitated by the Family Rights Group. We return to this in Chapter 13, in a fuller discussion about the context at the end of our study.

## Chapter 3: Method

### 3.1 Introduction

In very many areas of life laws are reformed, services are introduced, changed or closed without any realistic attempt to establish the effects of doing so. Campbell (1970) criticized this state of affairs in the USA in the 1960s but it is as true now in the UK. There is a general lack of socio-legal research which provides evidence of the effectiveness of laws. A lack of researchers (particularly with quantitative skills), research funding and interest in the generation of research evidence by those responsible for laws or the legal system, all contribute to this (Genn et al 2006) as does the lack of easily accessible data (FJR 2011; Broadhurst et al 2017). Governments lack the time within the election-cycle or the patience to develop reform proposals thoroughly, testing as they go; implementation is planned before early evaluations are complete (as in the case of the PLO) (Ipsos Mori 2014) and failed laws are ignored without any attempt to learn lessons. Most recently, the politics of austerity has encouraged a slash and burn approach, for example cutting legal aid and youth services without regard for the consequences. In this context, research which evidences effects may be unwelcome.

Fundamental to the study of the effectiveness of law reform are three questions: *Was there any effect? What was the effect? And why did the reform have this effect?* Beyond this there are more fine-grained questions relating to gaps between intended and observed effects (Sarat 1985), different effects for different cases, for different people, in different locations and at different times. For example, the *Pre-proceedings Study* (Masson et al 2013) was able to demonstrate in the Study Areas that one of the main aims was met whilst another failed completely. The pre-proceedings system diverted a substantial proportion (25%-33%) of families from care proceedings but using the process had no effect on the length of care proceedings. Many factors contributed to these effects including local authority social workers and managers wanting to divert cases from proceedings; some parents responding to the pre-proceedings meetings by engaging positively with plans to reduce risks to their children; and judges maintaining the same approach to proceedings regardless of use of the process. 'Knowing the mechanism' is important because it provides a foundation for developing better interventions, testing hypotheses and creating theory (Lempert 2008).

Identifying and measuring effects of a change in law or legal procedure necessitates comparing samples with or without the reform; the reform is treated as an 'intervention' like the provision of a novel therapy or new medicine. Such studies have been commonplace in medicine for over fifty years with the randomized controlled trial (RCT) accepted as the 'gold standard' for obtaining evidence. RCTs are relatively rare but not unknown in law (Greiner and Matthews 2016) and social work (Dixon et al 2014). Greiner and Matthews (2016) ascribe this to resistance by judges and lawyers to questioning the effectiveness of law rather than incompatibility with judicial responsibility, the impossibility of comparing cases and insuperable ethical difficulties. Dixon et al (2014: 1564) observe that RCTs in social

work are seen by some as ‘unethical, positivist, uncritically imported from other disciplines and unable to yield the certainty they promise.’

Other approaches to comparison, although not producing such robust evidence may be more realistic, produce valid evidence and be cost effective. Field experiments where the intervention is randomized are being developed in the USA to test, for example, whether the provision of public defenders is more effective than court appointed lawyers (Green and Thorley 2014). Civil procedure rules have been identified as an area suitable for testing by field experiments (Walker 1988). ‘A far-reaching evaluation of existing rules in comparison to alternative rules and procedures has the potential to increase the efficiency with which vast numbers of disputes are adjudicated’ (Green and Thorley 2014: 66). Truly randomizing the application of different rules would be challenging; applying rules to all cases in specific courts does not avoid effects related to lawyers and judges, ‘Hawthorne effects’ (Abramowicz et al 2011). Where randomization cannot be achieved the effects of law change or treatment can still be assessed through a natural experiment where the intervention is not manipulated by the researcher (Campbell 1970; MRC 2010; Craig 2011). This was the approach used in the both the *Pre-proceedings* and *Outcomes for Children* studies to identify and measure the effects of the reforms on the operation of the legal process and outcomes, focusing in the latter study on the immediate outcomes (court orders) and those after one-year (T1) for children subject to the proceedings, and comparing pre (S1) and post reform (S2) samples.

There is a (greater) risk of bias in natural experiments in that variations observed may result from factors which are not accounted for in the design. Variation between courts and local authorities in decision-making relating to care proceedings has long been recognised (Hilgendorf 1981; Hunt et al 1999) and regional differences in orders have been documented (Harwin et al 2018). Using the same areas for the before (S1) and after (S2) samples minimised this but did not remove it – changes in policy and practice not directly related to the reform may confound the findings. Further, the Court of Appeal’s decision in *Re B-S* (2013), discussed in Chapter 2, made it impossible to isolate changes from the PLO alone. In effect, the *Outcomes for Children Study* was a study of the impact of the procedural reforms in the PLO 2014 combined with the decision in *Re B-S*.

Record linkage is a developing method, supported by Government and the Research Councils, to maximise the value of datasets by combining data relating to the same individuals (Harron 2016). It has considerable potential to enhance the evaluation of children’s services and knowledge about those receiving them. Local authorities collect administrative data on looked after children and children in need for the Department for Education (DfE), which publishes summaries of the data and analyses of trends. Researchers have re-analysed these data to identify patterns of care (Sinclair et al 2007; Dickens et al 2007; Hood et al 2016a; McGrath-Lone et al 2017) and analysed Cafcass data to show patterns in the use of care proceedings (Broadhurst et al 2017a, 2018a) and orders made in them (Harwin et al 2018, 2019a). Also, by linking care and education data, researchers have explored the impact of different care careers on educational attainment (Sebba et al 2015). Before the *Outcomes for Children Study*, researchers gave little attention to the court’s role

in shaping the care population, and there had been no examination of the impact of court decisions on children's lives by linking court and care records. However, the *Family Justice Observatory Scoping Study* has recognised the potential of linking court data to care, education and health data to increase understanding of the impact of family proceedings (Jay et al 2017) and the Observatory has started work to support this (Broadhurst et al 2018b). The Ministry of Justice, Cafcass and the Department for Education have also created a linked dataset for family justice (Kaspiew 2018; MoJ 2018d; Jay et al 2019).

The remainder of this chapter gives a detailed account of the Study methods.

### **3.2 Research design**

The *Outcomes for Children Study* employed a natural experiment design with data linkage, using quantitative and qualitative methods to assess the impact of statutory and case law changes on care proceedings and the children subject to them by comparing court process, court orders and outcomes after 1 year (T1) for children subject to care proceedings in 2009-10 (S1) (before the changes) with those for a comparable sample of children with proceedings in 2014-15 (S2) (after the changes). It was designed to build on the Research Team's existing research relationships with local authorities and re-use care proceedings data (S1) originally collected for the *Pre-Proceedings Study*. This had the advantage of reducing the resources which would otherwise be required for a two-sample study; it fixed the location and time period used, but also limited comparisons of proceedings to variables included in the first sample. A second limitation was the length of post proceedings follow up for S2: this was only 1 year because of availability of administrative data. These two limitations were partially addressed by collecting data for S2 on all aspects of the proceedings related to the changes and by examining children's outcomes after 5 years (T2) for S1.

The *Outcomes for Children Study* was conducted on, and analysed data relating to, children subject to care proceedings brought by 6 anonymous local authorities, five in the South of England and one in Wales, during the two time periods. These are two Shire Counties, two Unitary Authorities and an Inner and Outer London Borough. These local authorities were selected for the *Pre-proceedings Study* using three complementary strategies, fully described in the Study Report (Masson *et al* 2013). These strategies identified potential participants in terms of local authority structure, location and demography; interest in the pre-proceedings process, willingness to participate in the project from both children's services and their legal department, and internal systems which reliably recorded the use of pre-proceedings processes and made it possible for a researcher (with the consent of the parent) to attend pre-proceedings meetings; and sufficient use of the pre-proceedings process and care proceedings to provide a sample for the study. These authorities were all contacted at an early stage of the project planning to establish whether they would be willing to take part again. All agreed.

The study was designed to use, and test the utility of, administrative data sources to provide information on children's outcomes after care proceedings, and to assess what additional data were required for meaningful interpretation of these data. These administrative data



sources are the Department for Education's children looked after (CLA) and children in need (CiN) datasets (and the Welsh equivalents). Early contact was made with the Department and Welsh Government to discuss access to these data. The plan was to link care proceedings data with these datasets for all children in the study, using deterministic methods (Jay et al 2017) and thereby identify what could be established about their outcomes after the proceedings. A second administrative source, the Cafcass case management system, which relates to family court proceedings, was used to provide data on any subsequent family proceedings relating to the Study children. The construction of this system with records based on mothers did not conveniently allow linkage to a database on children. Instead, the Cafcass system was searched and where children from the Study samples were identified in later proceedings, details of these were added to the Study database.

The researchers recognised from the inception of the Study that administrative data would only permit bald descriptions of the child's care and service journeys, without accounts of social work or other interventions not recorded in these datasets. Also, these data contained no details that might help explain the patterns observed, nor information about how care and services were experienced by children, parents or carers and so little that could inform assessments of children's outcomes. Children's social care case-files were identified as a potential source for such information. Collecting data from such case-files is time-consuming. The researchers therefore planned to select children from S1 and S2 in each local authority by reference to their age and the order granted so that they had this more detailed information for sample children of different ages with the same legal outcomes. These data were also collected at T1, and for S1 at T2, with subsequent information also recorded because this could shed light on outcome continuities and trajectories. Analysis of case-file information was intended to add to analysis of outcomes, provide a basis for researcher assessment of children's wellbeing and for case examples to illustrate and help explain patterns observed in the administrative data.

In order to understand the impact of care proceedings reforms on children's outcomes it was also necessary to know how children's services departments had responded to these changes, and about other relevant service developments. Qualitative interviews with social work managers and local authority lawyers were planned to identify how services were configured, any changes to them or to practice and the reasons for these; how local authorities had responded to the reforms to care proceedings; and managers' knowledge and concerns about children's outcomes, particularly relating to the non-implementation or breakdown of care plans. Focus groups with judges were planned to find out judges' views about the care proceedings reforms and the impact these had on their practice.

Local authorities which had taken part in the *Pre-proceedings Study* were re-contacted before any funding application was made because their participation was essential. In designing the Study, it was important to keep to a minimum the burden on the local authorities. This was done. The design required them: to identify children in the court sample and provide the ID number they used to submit data to the Department for Education for the CLA and CiN databases; to enable access to a sample of children's case-

files; and to identify managers with specific responsibilities who could be approached for interview. In return, the researchers offered to discuss the findings and implications for practice at a seminar in each local authority.

### **3.3 Data sources and data collection**

Much of the data used in connection with this study comes within the definition of ‘sensitive personal data’ in data protection legislation. Details of the legal basis for the researchers’ use of these data and the safeguards applied to protect data and data subjects’ anonymity are set out in section 3.4, below.

#### *Court proceedings data*

Documents created for the proceedings and records of decisions made were the sources for data on care proceedings. The key documents were the court application (C100), the threshold statement, social work statements, statements from parents, the children’s guardian’s analyses, court directions and court orders. These include information about the children, parents and family members and the circumstances leading to the proceedings, local authority action before and during the proceedings, care plans and proposals, court decisions and the timing of the various stages of the proceedings. For S1, this information was extracted by the researchers from the local authority’s copy of the case documents, entered onto a paper schedule and then into an electronic SPSS database. The original case-based database was restructured to allow linkage with child level administrative data. For the English cases, S2, court data were accessed using Cafcass dedicated laptops, extracted from copies held in Cafcass e-case files and entered directly into the child-level SPSS database. S2 cases from the Welsh local authority were collected, as before, from case bundles held in the local authority legal department. Accessing files via Cafcass allowed remote collection, reducing travel costs and time for the project, and the need for workspace in local authorities.

Cafcass case management systems cms and e-cms were the sources of information on subsequent proceedings for cases from England. The researchers created a database which included the date of application and type of any subsequent public or private law proceedings (and outcomes where these were available) relating to children in the Study and their non-study siblings. This was then incorporated into the Project database. This aspect of the Study was not replicated for Wales because of limited resources and the relative recent introduction of electronic systems by Cafcass Cymru.

The same two researchers were responsible for most of the data collection from court documents for both samples. They also prepared short, pen pictures of each case, which included distinctive features, explanations for delays, contests or their absence. These supported the analysis of court data and the preparation of case studies for this Report.

### *CLA and CiN Administrative data*

The Department of Education publishes detailed guides on these datasets, primarily as advice to local authorities recording data for them in the SSDA903 return but also of value to researchers (DfE 2012a, 2014b, 2014c). These describe the purpose and structure of the dataset, details of the data items included and coding. There are subtle changes to the data collected over time, so it was necessary to consult the guidance for each collection. Access to these datasets is strictly controlled (see 3.4 below); researchers must identify the data items they want and make a case for each one. To provide information on care journeys and outcomes, the researchers obtained the following items from the CLA database: the header information (child's date of birth and gender); episode data, including start and end dates for each care episode, placement type, legal status, and reason for the episode ending; information from the adoption return relating to adoption placements that ceased or decisions to change the plan from adoption; and the Strengths and Difficulties Questionnaire (SDQ) score and whether a child had been convicted or had a substance misuse problem from the OC2 section. From the CiN database: child identifiers, data items relating to referral as a child in need (available from 2012-13), the start and end dates of any child protection plan, and the initial category of abuse. For children from the English sample, the CLA data obtained covered the period from the child's first entry to care to 31<sup>st</sup> March 2016 (the Census day), or when the child left care. CiN items were sought from 2009-10 to 2015-16. Before 2008, the CiN data was based on a survey rather than a return by all local authorities.

There were very few differences between the English and Welsh CLA data but the CiN data were much more limited. In Wales, the CiN collection only relates to children whose cases were open on the Census day and for the previous three months. Consequently, it provides an incomplete picture of children in need and service provision.

### *Local authority case-files*

'The responsible authority's records are an important source of information for the child who is looked after away from his/her family. They provide information about the sequence of events and the reasons why important decisions in the child's life were made.' (DfE 2015b: 7.7)

Local authorities are required to maintain individual records for all children who are looked after and retain them for 75 years. The minimum contents of records are set out in regulations and there is further statutory guidance (2010 SI 959; DfE 2015b). They should include assessments and care plans, details of placements and arrangements for contact, information about educational progress and health, records of visits and reviews and all associated documents and correspondence. Separate records are kept for siblings and carers but information may be copied onto a child's file where it relates to them. For children not in care but in need, the case-file similarly contains details of assessments of need and decisions and actions taken in response to these.

Modern records are held electronically; their structure varies between authorities, but the same information is generally contained in specific documents such as review reports. The researchers accessed files in local authorities by being permitted to access the files for children in the case-file sample. Information was copied from this record into a recording schedule, with quantitative information entered into a SPSS database and a short narrative account prepared about each child. These were uploaded into an NVivo database to facilitate analysis. The schedule was structured to collect information for the period between the order and one year after (T1), and for children in S1, at T2, five years after the order. Later information, after either time points, was recorded relating to placements, contact, and other matters relevant to wellbeing. Information was collected about care plans, placements, service needs and services provided, legal proceedings, contact with parents and siblings, education and general wellbeing, including how these had changed since the court proceedings ended. Information collected from children's case-files was used to score their wellbeing, see 3.7 below.

#### *Interviews with local authority staff*

The principal social worker (in Wales, the consultant social worker), at least one local authority lawyer and at least one Independent Reviewing Officer (IRO) were interviewed in each local authority. Who else was interviewed depended on the way services were structured. Overall 56 local authority staff were interviewed.

An interview guide with a list of topics, potential respondents and indicative questions was prepared for the experienced interviewers. These related to: prevention and the use of the pre-proceedings process; care proceedings and perceptions about how these had changed since 2009 where interviewees had been in post that long; court orders, including any changes in the use of orders; and care/services after proceedings for parents especially those with children at home under supervision orders, for kin carers, foster carers, children in care and adopters. Interviewees were also asked about their knowledge and use of administrative data on children's services. In addition, specific questions were identified arising from patterns observed in the court data for each local authority.

All interviewees consented to their interview being recorded; recordings were fully transcribed, anonymised and organised in an NVivo database for analysis.

#### *Focus groups with judges*

With the assistance of the Judicial College, two focus groups with a total of 17 judges were arranged for family court judges attending a training seminar in January 2018. The judges came from across England and Wales and had between 10 months and 20 years of experience as family judges. Judges were asked to discuss their concerns about the PLO; how they coped with the 26 weeks deadline and the restriction on the appointment of experts; completing cases at IRH; changes to the orders granted; and whether they thought other judges at their court handled cases as they did. The judges were also asked for their views about finding out how children had fared a year after the order had been made. The

focus groups each lasted over an hour; they were recorded, transcribed, anonymised and added to the NVivo database.

All the data for the project was stored in the University of Bristol Research Data Storage Facility. The original administrative data and matching keys were stored in a folder only accessible to the PI, the research fellow responsible for managing the data and the project consultant. All other project data, including variables derived from the administrative data were stored in a collaborative project folder so it could be remotely accessed by members of the team from either UoB or UEA.

### **3.4 Access, ethics and anonymity**

This research involved personal data and sensitive personal data and was therefore subject to the Data Protection Act 1998 and, after 25<sup>th</sup> May 2018, the Data Protection Act 2018 and the General Data Protection Regulation. The key provisions relating to the use of research data are the effectively the same under both Acts.

The data relating to care proceedings, care or service provision (both the administrative data and from case files) and the updating material relating to later proceedings, were all processed without the need for the consent of the individuals they related to. The University of Bristol Charter gives researchers the power to ‘make provision for research and for the advancement and dissemination of knowledge’; this provides the legal basis for processing data for research purposes. There is a substantial public interest in ensuring that decisions by courts or local authorities about care promote good outcomes for children. This requires knowledge about how decisions turn out, and what contributes to those outcomes. This knowledge can only be achieved by collecting and analysing data relating to the decisions made and their outcomes for individual children. Moreover, only necessary data were collected, it was anonymised as far as possible at collection and no decisions were taken about individuals using these data, nor were the data likely to cause distress to the individuals concerned. Interview and focus group data were also processed for research purposes, but informed consent was obtained from participants.

Ethical approval for the study was obtained from Research Ethics Committees at the two universities. Research with local authorities also required approval by the Association of Directors of Children’s Services (ADCS) Research Committee. Access to data from the courts, via Cafcass, from the Department for Education and local authorities was subject to additional research governance processes as follows:

*Care proceedings data.* Use of files for research purposes requires the research to be approved by the President of the Family Division (Family Proceedings Rules 2010). The PI had to make a case for the research, explain how it would be conducted and how the confidentiality of parties’ information would be protected. Further permissions depend on the way files are accessed – via the courts, local authority parties or Cafcass. S1 was collected in local authority legal departments; S2 from Cafcass e-cms casefiles. This required application to the Cafcass Research Governance Committee and was conditional on all the

researchers having enhanced DBS certificates, valid for all periods when they accessed the Cafcass databases or case files.

*Department for Education Administrative CLA and CiN data.* Access to these data required permission from the Department for Education's Data Access Management Panel and was subject to personal undertakings about the storage and processing of data, and the publication of findings, including restrictions on identifying numbers smaller than 6 in data tables. The PI had to make a reasoned case for the use of these data and provide evidence of secure storage in a robust system, which only allowed access by named people in secure ways. Those accessing the data also had to produce valid DBS certificates.

*CLA and CiN data for the Welsh sample.* As only one Welsh local authority was involved in the Study, the data could not be accessed via the Welsh Government. Instead, the researchers obtained a copy of the required data from the local authority directly in accordance with their agreement with that local authority.

*Local Authority case-file data.* Access to these files was subject to separate research governance procedures in each local authority. These also covered the process of identifying case IDs to allow linkage and approaching staff for interviews. Staff who were interviewed consented to interview recording, transcription and (with one exception) archiving of their interview.

*Focus Groups with Judges.* These required the permission of the President of the Family Division. Individual judges volunteered to take part in the focus groups and individually gave informed consent to participation, recording and archiving of the transcript.

### *Anonymity*

The research took place in 6 anonymous local authorities. The identity of these local authorities was not disclosed to Cafcass, the President of the Family Division or ADCS. This was a key aspect of maintaining the anonymity of the children, whose cases and data were analysed for the research. The identity of the local authorities was disclosed in confidence to the persons in the Department for Education responsible for extracting the administrative data for linkage so that the right children could be identified; this information was disclosed to no one else in the Department. All location information was removed from interview transcripts and none of the metadata relating to interviews contained any means of identifying the interviewee or their employing local authority. Whilst a small number of staff in each local authority knew that their authority was taking part, none knew the identities of the other local authorities. This anonymity was maintained throughout both studies, including at seminars to discuss findings attended by policy makers and some managers from Study authorities. Specifically, name badges did not identify local authorities and those attending were contacted in advance and reminded of the importance for their authority and for the study of maintaining confidentiality.

A random sample of cases was selected in each local authority and the identities of the children in the study, including those whose case files were read, were known only to the researchers and to a children's services staff member whose assistance was required to

locate files. Cases were given a 4-digit number with the first digit identifying the local authority and the remaining digits indicating the family and children in each case. Within each local authority cases were numbered in order of collection, with S1 cases starting (LA number) 011 and S2 cases starting (LA number) 501 etc.

The linkage process precluded the data being fully anonymised until the link was achieved (see 3. 5). It was also necessary to retain Cafcass case ID during the study to facilitate identification of later proceedings. Both the local authority and Cafcass IDs were destroyed when the study ended.

Case studies discussed in this report are based on children in the Study. All names are pseudonyms and some potentially identifying details have been changed where the researchers consider that this does not materially affect the point being made. A similar approach was taken when material was presented orally, and in the research Summaries.

### **3.5 Data linkage**

Deterministic methods were used to match data collected from court files with administrative data held by the Department for Education. In the Welsh local authority, the researchers worked with the children's services data manager to identify children in both samples and their administrative data. For the English S1 children, matching involved a 4-stage process. First, local authorities were contacted to find out what information they needed about each case/family/child to identify the ID number used to submit data to the Department of Education for the CLA and CiN. Typically, local authorities needed children's names, dates of birth and a parent's name, but some also required an address or part address. Secondly, the Cafcass databases were used with data collected in the original study to create a list for each local authority labelled with a unique key number, known only to the project database manager. This precluded the possibility of identifiable data being linked to children in the sample. At this stage a record was also made of the Cafcass case IDs so that the databases could be searched for subsequent proceedings relating to these children. Thirdly, each identifying list was encrypted and sent to the relevant local authority. There were four children, all from the original pre-proceedings only sample, who were excluded at this stage because they could not be sufficiently identified. Where the local authority data department identified the children, they returned the key number with the local authority ID. There were 9 children, only two of whom had been subject to care proceedings, who were excluded at this stage for lack of clear identification. Finally, the lists of local authority IDs were combined and sent to the Department for Education data team, so the children's administrative data could be extracted and made available for the project. A further 3 'pre-proceedings only' and 26 care proceedings children were not matched at this stage. A similar process was followed for S2 in England but without the need to (re)-identify the children in the sample using the Cafcass databases, to provide the details local authorities required to locate them in their data systems. Identifying data was collected solely for matching purposes when the sample was initially drawn and then destroyed.

Overall, 262 of the 290 children in S1 were matched to their administrative data, a match rate of 90 per cent. In addition, 53 of the 65 'pre-proceedings only' children were matched.

320 of the 326 children in S2 were matched, a match rate of 98 per cent. Where children were matched to CiN but not CLA data, records from the proceedings confirmed that they had not been looked after. Identifying a substantial sample of children in care proceedings who were not looked after became important in the later analyses, see Chapter 8.

### 3.6 The Samples

The aim was to achieve a total sample of at least 600 children who had been subject to care proceedings, drawn from the 6 local authorities with as far as possible similar numbers in S2 as S1. Tables 3.1 and 3.2 summarise the samples of cases and children by local authority. The S1 sample had been drawn specifically to examine the operation and impact of the pre-proceedings process and included 34 cases (65 children) where there were no care proceedings during the study. LA F had fewer cases than had been estimated for S1 because of a substantial decline in its use of pre-proceedings and care proceedings compared with the previous year. To compensate for the low number of children from LA F a larger sample was taken for S2.

All the available S2 cases were included for LA C rather than exclude one case from the sample. The changes in the sampling percentage between S1 and S2 are a result of changes in the number of applications brought by the authorities, see Table 3.1.

**Table 3.1: Cases, sampling percentage and sample by local authority**

Local Authority	A	B	C	D	E	F	TOTAL
N s.31 cases in S1 period	53	41	33	54	37	13	231
Sample S1	30	30	30	33	34	13	170
S1 Sample percentage	57%	73%	91%	61%	92%	100%	74%
N s.31 cases in S2 period	101	35	31	79	73	33	352
Sample S2	40	30	31	40	42	20	203
S2 Sample percentage	40%	86%	100%	51%	58%	61%	57%
TOTAL S1+S2	70	60	61	73	76	33	373

**Table 3.2: Number of children in the Samples by local authority**

Local Authority	A	B	C	D	E	F	TOTAL
S1 Children	46	51	43	54	73	23	290
S2 Children	62	41	41	61	75	46	326
TOTAL S1+S2	108	92	84	115	148	69	616

#### *Selection of the samples*

S1 cases were randomly selected from lists of care proceedings and ‘pre-proceedings only’ cases in each local authority. Full details of the selection process are given in the original research report (Masson et al 2013). To select S2 cases, the Cafcass database (e-cms) was used to generate a report showing all care and supervision applications from the 5 English local authorities in the study period. This identified a total of 319 care and supervision



applications. Cases were randomly selected to achieve the required number, the e-case files for these cases were then checked to ensure that: (1) Each was a new s.31 application; (2) There were no duplications, including where cases had been consolidated; and (3) Key information was on file (as a minimum: an application form, chronology/case history and social work statement). Cases which were excluded following these checks were replaced with the next case in the list. In Wales, a comparable process was used to select cases from the local authority legal department list.

### *Comparability of samples*

The Study design and sample selection were aimed at producing a second sample of cases, S2, which were comparable to those in S1 which entered proceedings. Whether or not the pre-proceedings process had been used for S2 cases could not be a selection factor for S2 because this information was not recorded in e-cms, and letters before proceedings are no longer included in the court case file / the e-case file.

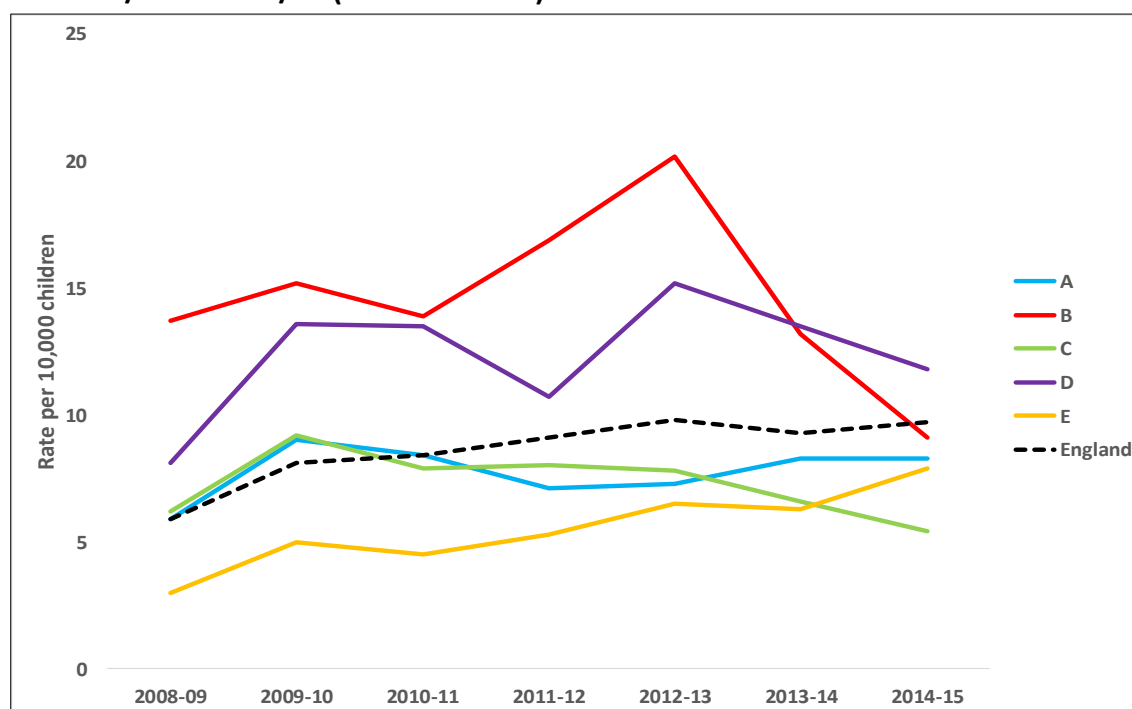
After S2 data had been collected t-tests and chi-squares were used to test whether there were significant differences between the two samples in relation to the children subject to proceedings, their parents' problems, and involvement of children's services before proceedings were brought. Very few were identified. There were no significant differences between samples in children's mean age at application, the mother's age or the proportion of fathers whose identity was known. There were some differences in the time children's services had been involved with the family, indicating that applications in S2 cases were more-timely and significantly more cases in S1 were identified as 'crisis' applications (see Masson et al 2008 and section 5.6, below). Appendix 1 contains a list of the variables tested and a summary of the results obtained.

### *Sample in the context of the national picture*

The general increase in the number of care proceedings applications was noted in Chapter 2. Although there has been continuous growth in cases since 2008, there is considerable volatility within individual local authorities. Figure 3.1 illustrates the changes in rates in the five sample authorities in England and compares this with the all England average. Data are not shown for Wales; the smaller number of Welsh local authorities might enable identification of the study authority.

It is clear from these data that some local authorities in the sample had substantial recourse to care proceedings, when account was taken of the size of their child population. The rates for local authorities B and D were higher, and more volatile, with particularly high rates between the two years when the samples were drawn but they were closer to the national average and other local authorities in the Study when S2 was collected. Local authority E seemed to follow the national trend; only in C did the rate drop repeatedly.

**Figure 3.1: Rate of care proceedings applications per 10,000 children in the English sample LAs 2008/09 to 2014/15 (source Cafcass)**



### 3.7 The case-file Study

The process for collection of data for the case-file sample is described in 3.3, above.

#### *Selection*

The case-file sample contained a total of 118 children, ten children from each local authority in each sample, except in LA6 for S1 where only eight selections were possible. This gave 58 cases in S1, and 60 in S2.

The main aims of this part of the study were to use the local authority case files to explore reasons for patterns observed in the Department for Education CLA and CiN data, such as moves within care; and to obtain information that cannot be found in the administrative data, for example about children's progress and wellbeing, their contact with parents and siblings, the reasons for any changes of plan etc. The case-file study also enabled the researchers to find out about any changes occurring after 31 March 2016 (the last date for which we received the administrative data), with the added advantage that, if the cases were still open or known to the local authority, the researchers could look beyond the one year (T1) and five year (T2) points and find out about the children's progress and any changes up to the date the file was studied (spring-summer 2017).

A purposive rather than a random sample was drawn with cases selected to illustrate wider themes and explore specific issues such as sibling placement, and the outcomes in cases where the local authority had opposed the order that was finally made. At the same time, the aim was to ensure that the whole case-file sample (and as far as possible within each LA)

reflected samples 1 and 2 overall; and contained sufficient numbers of similar cases for comparison and illustrative purposes.

The primary criteria for case selection were:

- Child's age at start of court proceedings, in three categories: under 5, 5-9, 10 years and over. The aim was to select five cases per LA where the child was under 5, three in the 5-9 category, and two aged over 10;
- Gender – four or five girls per LA, and six or five boys;
- Whether the child entered proceedings with siblings (aiming for four or five sibling cases per LA);
- The final order for the child – four or five cases per LA with CO or CO+PO; three cases with SGO, RO or CAO (including cases where these were combined with an SO); and two or three cases with an SO only;
- Whether the local authority opposed the final order (the court file data showed only nine of these, but the researchers also looked for cases where the LA changed its position significantly during the proceedings).

Additionally, the researchers looked to ensure that they included a selection of cases

- where the child was known to have special needs, and
- that the sample covered a range of placement types (e.g. foster care, residential care, with parent(s), with connected persons).

For each local authority, two researchers worked independently to select ten cases according to these criteria, using the case summaries drawn from the court files and administrative data. They then compared their choices and decided on an agreed list, with reserves. Reserves were needed in case there were very little data on the LA file (say, in cases ending with a residence order or child arrangements order, the family had moved away soon after the proceedings and there was no further information about them). In making their selections, the researchers also looked for range of features that might make the cases especially informative such as cases with a long history before the proceedings, cases with lengthy proceedings, cases where plans were disputed or changed, where there were different plans for different children, where the proceedings ended with on-going uncertainty about where the child would live, or complex contact plans for parents or siblings. Other considerations were ethnicity, family size, and the presence of parental mental health or substance abuse problems. In cases where there were two or more children, any child (but only one) could be selected to meet the criteria.

It was decided to exclude children who had been adopted within the follow-up periods, for two reasons: first, that they were no longer included in the CLA database, and access to case file information about them would be more restricted; and second, that there is already extensive research on adoption outcomes (e.g. Selwyn et al 2014) using much larger samples. Children on placement orders who had not been adopted were included in the pool. In the event there were five children (all from S1) who had been adopted in the

purposive sample. For three children the original plan made in the sample proceedings had broken down and a placement order had been made in further care proceedings. For the other two children the original plan had been adoption: one child had re-entered care within the research period; the other was only adopted one month before T2, the five-year point. One other child who was in a prospective adoptive placement at T2 following further care proceedings was subsequently adopted.

#### *Characteristics of the purposive sample*

Although the researchers sampled purposively the sample was broadly representative of the children in S1 and S2 overall in a number of key respects: age, gender, ethnicity, whether the child entered proceedings with siblings, whether the parent(s) had lost the care of previous children. In terms of the duration of proceedings, the purposive sample is broadly representative, but there is an over-representation of cases lasting over a year from S1. Cases ending in a CO+PO are under-represented in the sample, because of the sampling strategy to exclude children who were adopted. Almost 30% of cases in S1 ended in a CO+PO, but the case-file sample only included 8 cases (14%). In S2, 15% of the cases ended with a CO+PO; there were 3 cases (5%) in the case-file sample, see Table 3.3 below.

**Table 3.3: Summary of Case-file Sample by order and child's age, S1 and S2**

<b>Sample 1</b>	<b>Age at T1</b>						
	0-2 yr	3-5yr	6-8yr	9-11yr	12-14yr	15yr	<b>TOTAL</b>
Care order	0	0	4	8	4	4	20
CO+ PO	0	6	1	0	0	0	7
SO	3	3	2	1	1	2	12
RO/CAO (+SO)	3	2	0	2	0	0	7
SGO/ SGO+SO	6	3	2	1	0	0	12
No Order	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>12</b>	<b>14</b>	<b>9</b>	<b>12</b>	<b>5</b>	<b>6</b>	<b>58</b>
<b>Sample 2</b>							<b>TOTAL</b>
Care order	1	1	4	5	4	6	21
CO+ PO	0	2	1	0	0	0	3
SO	5	4	3	1	2	0	15
RO/CAO (+SO)	2	2	2	0	0	0	6
SGO/ SGO+SO	9	2	2	1	0	0	14
No Order	0	0	0	0	0	1	1
<b>TOTAL</b>	<b>17</b>	<b>11</b>	<b>12</b>	<b>7</b>	<b>6</b>	<b>7</b>	<b>60</b>
<b>N Both Samples</b>	<b>29</b>	<b>25</b>	<b>21</b>	<b>19</b>	<b>11</b>	<b>13</b>	<b>118</b>

#### *Measuring wellbeing*

In terms of wellbeing, the researchers assessed children in the case-file sample, using criteria devised by Farmer and Lutman (2012) in their seminal study of children returning home from care. Various aspects of a child's life which contribute to wellbeing were

assessed separately: the child's health; educational progress; any emotional or behavioural difficulties; peer relationships; relationships with current carers; relationship and contact with parent/s if the child was not living with them; family and social relationships; their social skills and social interaction and finally, a rating for their overall wellbeing. Guidance was given in the data collection instrument on how to rate the various aspects (see Box 3a).

**Box 3a: Guidance for researchers on rating (example)**

Social skills/social interaction:

Good - Child shows ability to adapt behaviour and appearance to different social situations. S/he makes good contact - including eye contact - with people of different ages, can sustain a conversation and is not overly challenging with adults or peers or excessively withdrawn or seeking to be the centre of attention

Satisfactory - Similar to good but not always so well-modulated to different social situations. For example, there may be some impatience with or disengagement from adults if not being paid enough attention, some shyness, awkwardness or difficulty in 'warming up' with new peers. However, the child can, with help and encouragement, show positive and well adapted social skills.

Some difficulties - Here there are some issues around the adaptability of social behaviour and social presentation that seem somewhat resistant to support and positive input. The child may find it more difficult or embarrassing to talk with a range of new adults and/or may tend rather easily to resort to challenging or withdrawn behaviour to try to deal with social relationships.

Difficulties currently outweigh strengths - There are clear problems for the child with social skills/interaction. S/he may be withdrawn, sulky, challenging or aggressive in many situations and relationships or may be loud or embarrass the family in public. S/he has difficulty in adapting behaviour to different people and contexts. Peers and adults may find him/her odd or difficult to engage with.

These criteria enabled 'researcher ratings' of the child's overall wellbeing at one year and five years after the proceedings (T1 and T2). There were four main categories for this: 'good', 'satisfactory', 'poor' and 'very poor'. There was also a category 'not known/cannot tell' where the file contained insufficient information. This was used for a few cases where children were no longer in care and their local authority file contained little current information.

The two field researchers scored the cases that they had each studied, based on their reading of the case file; the two lead investigators then rated the cases using written summaries provided by the field researchers. This gave each case/child three scores for overall wellbeing. There was a total of 169 ratings (117 at T1: 58 + 60, minus one not known; 52 at T2: 58 minus six not known). The broad-brush categories adopted from Farmer and Lutman (2012) worked well for this method: there was full agreement in 82, almost half the case-file sample. In nearly all the other cases, two of the scorers agreed and the other's score was only one grade different (e.g. two gave a rating of good and one satisfactory). In only four instances were there three different scores (i.e. good, satisfactory and poor), and

these were resolved by discussion. There were few 'very poor' ratings, so poor and very poor ratings were combined.

### **3.8 Analysis**

An analysis plan for the quantitative data was devised at the start of the project and revised as the study developed. There were two overarching issues to be explored in the data. First, comparisons of the legal process and its impact on children in terms of the timeliness of decisions and the orders made. Secondly, children's care after the order and how this differed between the two samples, particularly whether and in what ways shorter proceedings appeared to impact on children's lives after the end of care proceedings.

Quantitative data was analysed using SPSS v 23. The initial analysis, undertaken before the administrative data had been made available, focused on the legal process for the two samples of cases and court outcomes for the children. After the administrative data had been matched, attention shifted to the arrangements for the child's care during the proceedings, leaving care, and for those remaining in care after the order, their care in care, including placement changes. The complete database was unwieldy; a reduced version was produced by summarising placement and episode data and creating variables to capture care arrangements during and after proceedings, and when children left care and why. Using the reduced dataset, patterns of care for children who had been subject to care proceedings were identified and compared before and after the reform. Similarly, once the legal proceedings update had been collected from the Cafcass database, the comparative analysis was widened to examine patterns of subsequent proceedings for children not in care after the original proceedings. The data from the case-file study was integrated so it was possible to identify children whose experiences illustrated patterns observed; also, to analyse the patterns of service provision and contact with parents or siblings.

The qualitative data were analysed taking a thematic approach (Boyatzis 1998), using NVivo v 11. Qualitative analysis was integrated with quantitative analysis to explore in the quantitative data issues relating to proceedings or care identified in interviews. Conversely, the qualitative data were explored for comments on issues identified in the quantitative data. Preliminary analyses were discussed with practitioners, managers and social workers at seminars held in January and December 2017 and were refined through further analytical work and team discussion.

### **3.9 Limitations of the Study**

All research designs involve compromises and every study has its limitations. The main limitations in this study relate to decisions made when the *Pre-proceedings Study* was conducted. Re-using this dataset tied the Study to the local authorities chosen in 2009, limited the number of cases and children, and restricted the comparative analyses of the court data to the variables originally collected. Including a Welsh local authority made the administrative arrangements more complex; having only one Welsh authority meant that it was not possible to examine whether the child care practices there related to the different

policy context in Wales. Similarly, selecting the other local authorities from southern England meant that different care patterns, which are now known to be used more commonly in the north such as placement with parents under a care order (Harwin *et al* 2018), were absent in the data. The size of sample limited some of the analysis but there were many differences between the samples which reached statistical significance at the .01 level or better. No details were recorded in the 2009-10 data for the number of judges or experts, consequently those important aspects of the PLO could only be described, not compared in the 2014/15 sample. Similarly, the collection of data about the use of the pre-proceedings process was more problematic in 2014-15 than it had been earlier. Reliable data could not be obtained for the whole of the PLO sample, and therefore interviewees' comments about its use could not be thoroughly tested in the quantitative data, and only limited comparisons about the use of the process in the two samples could be made.

The administrative data were only available for the period up to 31<sup>st</sup> October 2016. For some children in S2 this was less than a year after the end of their care proceedings, less than the intended comparison period between the two samples. This occurred because it was necessary to extend the sampling period into 2015, and due to the length of time the Department for Education required to make the administrative data available. Realistically the next tranche of data, for the period up to 31<sup>st</sup> March 2017, could not be sought as the project planned to complete in February 2018. Only by designing a longer (and more-costly project) or obtaining newer data from local authorities direct, could this have been avoided. One consequence of the 'right censoring' of the data was that it was not possible to compare adoptions in the two samples. Instead, comparisons were made for adoption plans (placement orders) and adoption placements.

The data items requested from the Department for Education were relevant to the study. Additional data such as the postcode of the placement would have enabled us to see (or map) spatial changes for children who moved placement, for siblings placed separately and helped clarify whether children returned to the same placement later. Similarly, the new data item, not available for our sample, of long-term foster placement would have clarified that such a long-term foster placement had been achieved, rather than leaving this to be deduced from placement length for children not included in the case-file study. The Welsh sample was not followed up in the Cafcass Cymru database to see whether they had been subject to further proceedings. The team lacked the resources to do this.

The case-file study was based on a purposive, not a random, sample. This limits the extent to which the findings can relate to the care proceedings populations in the sample local authorities. However, the selection provided a range of examples of different types of placement for children of different ages which might not have been achieved otherwise. Sampling purposively also allowed us to look in detail at local authorities' response to orders they had opposed, and to examine more closely issues relating to sibling placement and sibling contact for children of different ages.

Overall, re-use of the *Pre-proceedings Study* data was an advantage but had a further study been planned from the start some different decisions might have been made about the selection of local authorities and the size of the sample.

### **3.10 Data Archiving**

The data and collection instruments for the *Pre-proceedings Study* were deposited in the UK Data Archive in 2013, reference 851380.

All the collection tools and research instruments used for *Outcomes for Children Study* have been deposited in the UK Data Archive together with anonymised child level data collected from court files and local authority records, including the restructured (child level) data from the *Pre-proceedings Study*. The collection includes the syntax used to derive variables, for example those measuring time or identifying children as in care or not, topic lists for interviews and interview transcripts. The reference number for this collection is 853328.

The terms and conditions for accessing administrative data does not allow deposit.

### **Summary**

The *Outcomes for Children Study* used mixed methods and four distinct data sources (court case files, administrative records, children's social care files and interviews/ focus groups with professionals) to examine the operation of the PLO and its impact on children's outcomes. Quantitative data were analysed using SPSS v. 23; a project was created in NVivo v.11 to facilitate the analysis of the qualitative data.

Data for two random samples of care proceedings brought by 6 local authorities in southern England and Wales was used to compare process and outcomes *before* (S1, 170 cases with 290 children, issued in 2009-10) and *after* the PLO reforms (S2, 203 cases with 326 children, issued in 2014-15).

Deterministic methods were used to link proceedings data for each child with their administrative data contained in the Department for Education's Looked after Children (CLA) and Children in Need (CiN) databases (and the Welsh equivalents) up to 31<sup>st</sup> March 2016, so that children's care and service journeys after the end of care proceedings could be explored. Match rates of 90% for S1 and 98% for S2 were achieved. Data were extracted and included in the Study database. Subsequent proceedings involving the children from England were identified using the Cafcass e-cms database and summarised in the database.

Data were extracted from local authority social care files for a sample of these children (S1 58, S2 60), selected purposively to cover the range of children's ages and the orders made, to examine children's care and wellbeing after care proceedings. Researcher ratings of wellbeing were made based on information at T1 (1 year after the final order in care proceedings) for both samples and at T2 (5 years after the order) for S1.



Local authority lawyers and services managers, with responsibility for services related to services for children in need and care after proceedings, including adoption, and IROs were interviewed in each local authority (56 interviewees). Two focus groups with judges who decide care proceedings were held in January 2018.

## **Chapter 4 Theoretical perspectives**

As discussed in Chapter 2, the period of our research study has been marked by challenging changes and considerable ambiguity – notably, increased demand on local authorities and the courts alongside reduced resources; and the pressures to intervene more decisively and swiftly to protect children from harm, alongside calls for a greater sensitivity to the impact of poverty and the growing popularity of relationship and strengths based practice.

This chapter explores the core conceptual and theoretical debates behind these dilemmas. The first section looks at the balance of coercion and support in child and family social work – not only in terms of the way social workers work with families, but also the way that social work itself is regulated. This leads on to the second, which focuses on the contested boundary between the courts and local authorities in decision-making and scrutiny of practice. The third section considers views about the nature of ‘justice’ in child and family proceedings, exploring the dynamic relationships between decisions and procedures, and between flexibility and formality. The fourth section reviews the debates about measuring and achieving ‘good outcomes’ for children who have been the subjects of statutory intervention.

The theme that runs across the sections is that social work practice and legal proceedings alike are shaped by many factors that lie outside the formal rules and procedures which, on the face of it, so dominate both of them. The availability of resources is one key element that shapes what social work and legal practitioners can achieve, but beyond that a profound impact is made by professional and local cultures, and further on still, by wider societal beliefs and expectations about family life, the upbringing of children, and the roles of social workers and the courts. These elements create a fluid and often highly conflictual context for child protection and court proceedings.

### **4.1 Family support and child protection**

Chapter 2 showed how the pressures on social workers to protect children from harm and abuse have evolved and grown over the period of our research study. The Laming Review of 2009 sharpened the focus on preventing children suffering abuse or being killed, and since then there have been further high-profile cases and an expanding awareness of harm (e.g. to include radicalisation and criminal sexual exploitation). But at the same time, there have been calls for a greater sympathy towards the challenges of poverty, and more constructive and strengths-based work with families. In the context of austerity policies, the tensions between family support and child protection orientations (Gilbert 1997; Gilbert et al 2011) have reached a new level of intensity.

For some commentators, the statistics about the increased use of child protection plans and care proceedings are evidence of a much harsher approach to children and families, and the need for a new, better resourced and more compassionate approach to family support (e.g. Featherstone et al 2014a, 2014b, 2018; Bilson and Munro 2019). Others, whilst calling for more support for children and families, put the emphasis on the other side of the coin, that

this must run alongside clear awareness of risks, including the long-term harms of neglect, a focus on the child's safety and wellbeing, inter-agency monitoring and an approach of 'respectful uncertainty'. Examples are Davies and Ward (2012) whose overview of research into child protection services in the first decade of the twenty-first century concluded that more, rather than fewer children, would benefit from being looked after away from home; and Sidebotham et al (2016), whose analysis of serious care reviews over the period 2011-14 highlights the importance of 'authoritative practice ... a stance of professional curiosity and challenge', albeit from a supportive base and 'relationships of trust with children, young people and parents' (p 18).

The tensions and overlaps between family support and child protection orientations are staples of the social work literature, although they are better seen as analytic tools, models or 'types', rather than accurate descriptions of 'reality'. Dickens et al (2017) suggest that they should be considered the extreme ends of a continuum, with different countries situated at different points along it, but always with a mixture of elements. It is important too to appreciate that these are not the only core approaches. Fox-Harding (1991) neatly portrays a range of priorities in her four-part typology of perspectives in child care policy; and Berrick (2018) identifies eight 'impossible imperatives'.

Fox-Harding (1991) characterises her four perspectives as *laissez-faire* and patriarchy; state paternalism and child protection; the defence of the birth family and parents' rights; and children's rights and child liberation. The middle two capture the child protection and family support approaches. The *laissez-faire* approach calls for strictly minimal intervention by the state, only in cases of severe and immediate danger, and is less prominent in UK debates (but more common in the USA – Gilbert 1997), whilst the children's rights perspective has become more prominent and sophisticated since 1991, as awareness of the UN Convention on the Rights of the Child has grown. It may be detected in various amendments to the Children Act 1989 which have increased the number of contexts in which local authority social workers are required to ascertain and consider the wishes and feelings of the child, and in statutory guidance; in the roles of the UK's four children's commissioners and the activities of third sector children's rights campaign groups; and in the role and duties of Cafcass officers in care proceedings.

The child protection and family support dilemmas have a fundamental and enduring character. Gilbert (1997) and Gilbert et al (2011) use the two approaches as a basic framework to assess the features of child protection systems around the world. In the first book, the UK was characterised as having a child protection orientation, even though the Children Act 1989 emphasises the importance of services for family support (s.17). But research in England undertaken in the early 1990s, suggested that the balance had swung too far towards child protection (DH 1995; Gibbons et al 1995), and too many families were being subjected to 'child protection investigations', rather than being assessed for family support services. There were calls to 'refocus' local authority services, and the introduction of a new *Framework for the Assessment of Children in Need and their Families* (DH 2000; and see Platt 2006).

By 2011, the time of the follow-up book from Gilbert et al, the view was that there was a more nuanced balance between the child protection and family support models. That book would have reflected changes under the Labour government of 1997-2010, with its core programmes of Every Child Matters and Sure Start. In that context, Gilbert et al identified a third perspective, which they call 'child focus'. The core elements of this approach are an emphasis on the child's needs *now*, but also as a future citizen; on children's development and the importance of tackling unequal outcomes; children's rights and parents' responsibilities (i.e. children's rights are seen as distinct from their parents', but parents should normally be assisted to fulfil their responsibilities); and early intervention.

Events since 2010 have changed the picture again, and it is possible to see a swinging back towards child protection (Parton 2014), as shown by the increased rates of children on child protection plans and in care. But as Chapter 2 highlighted, it is still (and always will be) an ambiguous state of affairs. There are variations between areas and considerable disagreements about the meaning and impact of policy changes (e.g. Bywaters et al 2015; Harwin et al 2018). The arguments about 'early intervention' illustrate these.

In essence, critics such as Featherstone et al (2014a) distinguish between early help and early intervention, arguing that the latter has become dominant, with its emphasis on time-limited assessments and (often franchised) parenting programmes, swift decision-making, speedy removal of children if satisfactory progress is not made within the timescales; a coercive focus on parenting, risk, the first years of a child's life or young people's behaviour. Wider questions about the impact of poverty, gender, race, life opportunities are ignored, and long-term relationship-based support is withdrawn. Against this, Axford and Berry (2018) argue that Featherstone and colleagues paint an overly negative picture, and that early intervention can play a positive role in protecting children *and* supporting families. They make no apology for the sense of urgency – intervening before the problems become embedded is at the heart of the approach – but recognise that family-based programmes have to work alongside policies and practices that tackle poverty.

As regards tackling poverty, Morris et al (2018: 1) characterise social work's response as 'complex and contradictory'. They argue that in terms of day-to-day practice, poverty has become invisible, the wallpaper of practice. Whilst social workers would regularly talk of the 'toxic trio' of domestic violence, substance misuse and parental mental ill-health, they tended not to identify poverty as a risk to children in the same way. Tackling poverty seemed to be overwhelming, too big an issue to address; there were examples of sensitive practice (e.g. putting foodbank supplies into a supermarket carrier bag to preserve the family's dignity) but on the whole, assessments, decision-making and action took little or no account of it. But media coverage of child abuse 'scandals', and the demands of the court in child care cases, mean that whilst social workers may be sympathetic to families in desperate financial straits, there are great pressures to focus on the risks of significant harm to the child.

### *Local and regional variation*

The challenges of promoting both prevention and protection, and taking appropriate account of poverty, are illustrated and compounded by the extent of local and regional variation. Here again the picture is 'complex and contradictory'. The striking finding of Bywaters et al (2018), mentioned in Chapter 2, about the huge differences in the likelihood of children from poor and wealthy neighbourhoods being in care or on child protection plans, is challenged by other findings - including their own. Bywaters et al (2015) found that children in poorer neighbourhoods within more affluent authorities were more likely to be on child protection plans or in care than children from similarly deprived neighbourhoods in less well-off authorities. They suggest that this is a product of the *perception* that children are at risk, and the capacity of services to intervene (demand and supply).

This indicates that local demographics and local deprivation rates make less of a difference to local practice than the availability of services and the culture of an organisation or workplace – and this is a well-known and long-standing finding from research into child and family social work (e.g. Packman et al 1986; Rowe et al 1989; Oliver et al 2001; Statham 2002; Dickens et al 2007; Sinclair et al 2007; WWC-CSC 2018). For example, Sinclair et al (2007) (a study based on a sample of nearly 7,400 children looked after between 2002 and 2004, in 13 local authorities in England) identified the large part that local policies, services and practices play in what happens to children. There were large differences between the authorities on numerous dimensions, including the proportion of children returning home from care within a year of entering, adoption rates, the use of foster care, residential care, kinship care and placement with parents. These differences were not explained by differences in the children. The return rates were linked with the availability of community-based resources: in areas where there were more services, children were more likely to be returned. As well as differences between councils, there were differences at team level: for example, rates of adoption were seen to hang particularly on social worker caseloads.

But the family support/child protection literature, and the international comparisons used with it, highlight an important point about 'culture'. Local practices and customs are certainly important in explaining local variation; but alongside this 'micro' perspective, one has to look at the 'macro', and locate child welfare policy and practice within *national* culture, the values and principles that dominate in public life and policy. These are frequently contradictory, and often contested, but at different times different features do hold sway; and over the last eight or nine years in England, services for children and families (protection and support alike) have been shaped by the impact of austerity politics, the hardening of attitudes towards people in poverty or in need of help from the state, and a mistrust of welfare, of 'others' and of 'experts'.

### *The regulation of social work*

In this context, there have been debates about the control of social work policy and practice, the relationships between central government, local government, and the courts. The tensions were shown in Chapter 2, in the discussion about the impact of *Re B* and *Re B-S*. At a policy level there has been a strong rhetoric of localism and (as in the Munro review)

moving away from bureaucracy and proceduralism, but if this were to be followed consistently it would be likely to lead to wider differences between local authorities, and even within them; and yet such differences are generally seen as a cause for concern, for making services a 'postcode lottery'. Ofsted inspections take place and national procedures are published in order to 'raise standards' and reduce variability.

In other words, the messages from central government about freedom and control are highly ambiguous. In the field of children's services, two examples illustrate this. First, the national inter-agency guidance on child protection in England, *Working Together*, had evolved over the years into a document that was, by the 2010 edition, 388 pages long. Calls to reduce and simplify it were met, in 2013, by the production of a volume that had been cut down to 97 pages. This was portrayed as being in accordance with the Munro goals, and giving greater freedom for local areas to develop their own processes. However, as Parton (2014) observes, the various appendices at the back, still part of the guidance, add up to no less than 3,500 pages of material. The Munro progress report considered it better to talk of 'moving some guidance' rather than removing it (Munro 2012: 10).

Second, despite the calls to reduce prescription in child protection work, there has been an increase in regulations and government guidance in other areas of child and family social work. Prime examples are the guidance and regulations on care planning and review for looked after children (an up-dated version was published in June 2015: DfE 2015b), and the highly prescriptive adoption action plan, with targets and scorecards, as discussed in Chapter 2 (DfE 2011b; 2012b). As the Munro progress report observes, this creates a 'confusing narrative' (Munro 2012: 53).

A further dimension of the tensions around the regulation and control of social work concerns the role of Ofsted in England. The impact of Ofsted inspections and judgments on the performance of local authority children's services is controversial. The consequences of an inadequate rating can be devastating on the local authority and other child welfare partners, for staffing levels, workloads and staff confidence (Jones 2015a), but do they measure the right things, and do they actually lead to improvements? Bywaters et al (2017b) are critical of Ofsted for claiming that performance is down to the quality of leadership and denying the influence of deprivation and expenditure. Munro (2014: 2) suggests that more work is needed on defining and describing 'good' practice and warns that 'the complicated causal links between professional practice and outcomes make it difficult to make judgments about causality rather than just correlations'.

Likewise, Craven and Tooley (2016: 76-77) question whether 'in the area of child protection it is too much to expect regulators to judge accurately very complex human interactions', and conclude 'it should not, therefore, be completely unexpected when tragic regulatory failures occur'. They note the pressure to achieve high ratings under tight financial constraints and argue that this may lead to 'strategic behaviour' by all agencies involved. In that regard, Hood et al (2016b, 2019) found that, in the year following an inadequate Ofsted rating, services seemed to make greater use of child protection interventions, and argue

that the inspection process may therefore be exacerbating a shift towards protection rather than family support and prevention.

In summary, there are profound questions about both the feasibility and the consequences of 'top-down' attempts to regulate and standardise an activity such as social work. These are also reflected in longstanding tensions between the courts and local authorities about the control of social work practice, which have intensified in recent years. These issues are explored in the following sections.

#### **4.2 The courts and local authorities**

The Family Justice Review characterised the attitude of the courts towards local authorities as one of distrust; local authorities' attitude towards the courts as one of dissatisfaction; and the mutual relationship as one that could 'verge on the dysfunctional' (FJR 2011b: 101). The conflicts are rooted in the respective roles of the two bodies. Local authorities have statutory duties to support families in the upbringing of 'children in need', to safeguard children from harm, and to promote the welfare of children they are looking after, or have looked after; and in all this, to comply with statutory guidance and constrained budgets. When their attempts to work with families in 'voluntary' ways are unsuccessful, they may have to turn to the courts for an order. However, the courts are not there simply to rubber stamp the authority's application. Their role is to scrutinise the local authority's application, to be satisfied that the evidence meets the statutory criteria in the Children Act 1989, including decisions in the child's best interests, and the ECHR human rights principles. Part of this scrutiny includes being satisfied as to the authority's care plan for the child (i.e. looking to the future, not just at what has happened in the past); however, it is a key principle that once a final order is made, the courts have no role to review how the local authority implements it. These features – the scrutiny and the separation of powers – are two of the key factors that lie behind the tensions.

Inevitably there will be times when the court decides against the local authority, and criticism of local authority practice may be expected from time to time, but there have been occasions when it has been expressed in exceptionally strong, condemnatory language. These criticisms may be difficult for the local authority to accept (Dickens 2005; 2006). And the courts have not always accepted the division of powers but have sought to dictate social work practice more widely, in the pre- and post-proceedings stages. The high-profile judgments in *Re B* and *Re B-S* in 2013, and a series of judgments in 2015 about local authority 'misuse and abuse' of s.20 of the Children Act, are recent examples but they have a longer background.

##### *Scrutiny of the care plan*

Prior to the implementation of the Children Act 1989, the courts had no ongoing power over care plans where a child was in care under the statutory schemes (Children and Young Persons Act 1969, Child Care Act 1980, *A v Liverpool City Council* 1982), but the courts could control care if the child was committed to care in wardship or under the inherent jurisdiction (Lowe and White 1986). The Review of Child Care Law (DHSS 1985) discussed the

respective responsibilities of courts and local authorities and whether courts should have a role reviewing care cases (pp 7-9 and 146-7). It distinguished between the role of the court as decision-maker on major matters such as making and discharging care orders, and the local authority's role in the ongoing management of the case with a responsibility to 'take a grip' on the case and avoid drift. It also distinguished between regular reviews of the case, which should be a local authority responsibility, and applications to court to decide disputes. However, the Review was concerned about the costs and delays associated with the court process and resources for all children in care, so it favoured internal complaints systems with the courts having only a residual function in disputes relating to care arrangements. The issue of contact with children in care presented problems – it 'be-straddled' the line between major and day to day matters, impacted on parents' rights and prefigured decisions to exclude the possibility of reunification. Also, recent legislation had given parents a right to challenge termination of contact in the courts. The Review concluded that courts should continue to have jurisdiction over contact, and this should not be limited to cases where it had been terminated (p. 149).

The Children Act 1989 ended the option for local authorities to apply for children to come into care through wardship proceedings, but that did not resolve the debates about the proper role of the courts in child care cases (Dewar 1995; Hayes 1996). Judges have long been unhappy about this limitation to their powers.

The requirement that the court should only make an order if it considers it better than making no order at all (CA 1989, s.1(5)) means that the court has to be confident in the authority's care plan, and its capacity and determination to implement it; however, no provision was included in the Act about care plans. Case law subsequently held that they should be provided and include the information suggested in the Children Act Guidance, Volume 3 (DHSS 1991; *F v Manchester City Council* 1993). Courts' doubts about local authority's plans created a tendency to demand increasing levels of detail from the local authority (despite the evidence that authorities do usually implement the agreed plan: Hunt and Macleod 1999; Harwin et al 2003).

The issue was debated at the 1997 President of the Family Division's inter-disciplinary conference (Thorpe and Clarke 1998). Wall (who was later to become President of the Family Division) argued for reform so that the progress of children in care could be monitored where the judge considered this necessary. The implementation in October 2000 of the Human Rights Act 1998 gave the courts a new opportunity to achieve this. However, a decision by the Court of Appeal which increased judicial power over care plans (the proposal of 'starred care plans') was overturned by the House of Lords (*Re S; Re W* 2002). The courts could scrutinise care plans whilst in care proceedings but anything more was dependent on a case being made under Human Rights Act or for judicial review on the basis that the local authority had acted outside its powers or without following proper procedures (Cretney, Masson and Bailey-Harris 2008: 812-4).

However, the House of Lords' judgment held that the courts' concerns were valid, and called on the government to consider whether some degree of ongoing court supervision



would improve ‘the quality of child care provided by local authorities’ (para 106). The government’s response was to revise the statutory guidance on care planning and case review and introduce the statutory role of independent reviewing officer (IRO) to monitor the local authority’s implementation of the care plan. The expectation was that disagreements should normally be resolved within the authority, but if that could not be achieved the IRO had the power to refer the case to Cafcass, and they in turn had a power to return it to court (see Dickens et al 2015; Dickens 2017). The performance of the IRO system, and particularly the low number of referrals to Cafcass (and as at March 2017, none subsequently brought to court), has been a source of discontent for judges, forcibly expressed in the case of *A and S v Lancashire County Council* 2012.

The Family Justice Review (2011b: para 3.16) concluded there was ‘little doubt that courts have progressively extended their interest in the proposed care plan’ and recognised that this had contributed to the excessive delays in care proceedings. Alongside its proposal for a 26 week limit for care proceedings, it recommended that their scrutiny by courts should be limited (FJR 2011b: paras 3.12-3.44). The Children and Families Act 2014 amended section 31 of the Children Act 1989, so that when a court is deciding whether to make a care order, it is only required to consider the ‘permanence provisions’ of the s.31A care plan (s.31(3A)) and the arrangements for contact (s.34(11)). The *Re B* and *Re B-S* judgments may be understood as part of the court’s backlash to this constraint.

#### *Courts and local authorities, law and welfare: battles for control*

The strong language used in the *Re B-S* judgment (e.g. about local authority evidence too often being ‘anodyne and inadequate’, ‘this sloppy practice must stop’: paras 39-40) is reflected in other post-2013 judgments. There was a notable series of judgments on the ‘misuse’ of s.20 accommodation. For example, in *Northamptonshire County Council v AS* (2015) the judge spoke of the ‘egregious failures’ and ‘appalling conduct’ of the local authority (paras 4 and 32), their ‘wholesale failure’ of the child and his family (para 34), and a ‘catalogue of errors, omissions, delays and serial breaches of court orders [that was] truly lamentable’ (para 35). In *Re N (Adoption: Jurisdiction)* (2015) the President was equally scathing about the misuse of s.20, and that judgment and its consequences are discussed further in Chapter 13.

These tendencies are not new – there is a long history of strongly worded judgments and attempts by the court to impose guidelines on local authority practice – and of course, criticism may be warranted on occasions. But given the tone of the judgments, we can see signs of two closely related battles – for control over social work practice, and over what happens in the courts. The 26 week deadline and its associated changes were an attempt to change court processes and practices, effectively limiting the court to examining the case for an order, relying on the expertise of the local authority social workers and the children’s guardian; but the publication and promotion of the *Re B* and *Re B-S* judgments at exactly the same time the reforms were being launched shows the courts both trying to shift the burden of change on to local authorities, by placing requirements on them and indicating the court’s view of current standards, encouraging challenge by the other parties.

The guidance in *Re B-S* could be seen as consistent with the 26 week goal and helpful to local authorities – ‘here is what you have to do if cases are to have a chance of finishing fairly in 26 weeks’. Munby’s series of newsletters, *The View from the President’s Chambers*, attempted to portray it that way. But things are not that straightforward. The judgments use the sensationalist language familiar in popular media coverage of child care and protection cases (Jones 2014; Biesel et al 2020), and show little awareness of the realities and practice dilemmas of everyday work (Dickens and Masson 2016; Masson 2017). Unlike statutory guidance, which local authorities also have to follow, it was not developed in a collaborative way with local authorities, professional leaders and relevant campaign groups, but is a display of the court’s independence and power.

Behind the arguments about the separation of powers, the scrutiny of the application and holding the local authority to account, there are deeper tensions between law and welfare as paradigmatic approaches to regulating society and dealing with social problems (in this instance, child maltreatment and neglect). Questions about the relationship between them, about which approach is or should be ‘on top’, are another perennial theme in the social work literature, like the family support and child protection debates discussed above (Dickens 2008, 2013). Should social work be seen as a creature of law, with ‘statutory social work’ being *the* defining aspect of what social workers should do? Or is it – as most in the profession would argue – rooted in wider ethical duties to the client with law providing just one of the frameworks for practice (i.e. alongside ethics, research findings, service users’ wishes, budgets etc). Whilst being ethical means treating people fairly and with respect, and law certainly has an important part to play in that, this is not achieved by focusing only on procedural requirements (e.g. the risk of being a ‘jobsworth’ or putting a target ahead of an individual’s needs).

Welfare approaches to social problems rely on education and support (e.g. in how to bring up one’s children, or lead a healthy lifestyle) and for the more difficult cases expert help (doctors, psychologists, psychiatrists, paediatricians, social workers) but these approaches are essentially collaborative – the families have to agree to work with the welfare professionals. If this fails, the welfare approach requires a legal mandate from the courts to impose its remedies. Judges may or may not decide to follow the recommendations of the welfare experts (and of course, the ‘experts’ may disagree) so in that sense law has the upper hand. Against that, judges are not generally experts in child health or development, and so they need the evidence of welfare experts if their judgments are to be attuned to the needs of different children and families (especially in terms of how the care plan will meet the child’s needs in the future).

But, as the scathing judgments show, judges’ lack of specialist expertise does not stop them making hefty criticisms of welfare experts, and the professionals have to learn to practise and present their evidence in ways acceptable in court. Law has been characterised as an ‘autopoietic’ discourse – that is, a closed, self-referential system that may appear to be open to other forms of knowledge but in fact ‘colonises’ and simplifies them to fit its requirements (e.g. King 1991; King and Piper 1990; King and Trowell 1992). Alongside these wider forces, local court cultures also play a part in how cases are treated in the courts, and

lawyers respond to this by presenting the cases in ways that are attractive to the local court – discussed further in section 4.3 below.

As noted above this conflict is not new but the combination of interests, personalities and the imposition of change brought matters to a head. The 26 week reforms may be seen as a way of recovering ground that courts and lawyers made in the control of social work practice since the re-ordering by the Children Act 1989. Extensive proceedings, involving court-ordered assessments which had strengthened the court's ability to hold the local authority to account and had been seen to protect the rights of parents to the detriment of the children, were abolished. The courts then struck back, casting doubt on the competence of local authorities and their social workers, using judgments to impose new 'requirements' and encouraging claims for breach of Human Rights. Together these increased the focus on procedures, how things had been done, overshadowing children's welfare. The *Re B-S* judgment certainly reflected the lack of trust between the courts and local authorities and contributed further to it. An uneasy truce has been reached since then, with local authorities seeking fewer placement orders and courts making damages claims more difficult, but there has been no resolution of the underlying tensions and mistrust, as discussed further in Chapter 13.

#### **4.3 Procedure and decisions**

The differences between legal and welfare approaches to dealing with social problems, and their inevitable but often fraught relationship, are also shown in different understandings of fair decision-making and the ways that cases are decided. How far is justice achieved by following a formal (quasi-adversarial) process through which the local authority proves its case and decisions are made by the judge, and how far is it achieved through a flexible approach, treating different cases differently, using professional expertise and allowing or even encouraging a departure from formal process? The family courts appear to combine – or try to combine – both approaches; but how this is achieved is unstable, varies over time and place, and produces different advantages and disadvantages, particularly in terms of case duration, costs and variability.

Procedures and practices are not simply neutral vehicles that lead to a decision-making moment; rather, process and decisions are closely interwoven in a dynamic and contentious context, creating constraints and opportunities for each other.

##### *Deciding care cases*

Care cases involve a series of decisions throughout their passage through the courts. There are decisions about the child's care during proceedings (what interim orders should be made, whether the child should remain with the parent, be cared for by a relative or enter care and the contact arrangements); and case management decisions, which set and maintain the case on a course to reach the final hearing with the evidence needed for decisions (Hunt et al 1998). In theory, all these are matters for the judge (FPR 2010); in practice, many are resolved by discussion within and between the parties and their lawyers, who decide whether to make, agree, oppose or withdraw proposals (Pearce et al 2011).

In many areas of civil law, including private family law, socio-legal scholars have detected a long and well-established trend away from adjudication towards negotiation (Galanter and Cahill 1994; Kritzer 2004; MacFarlane 2008; Genn 2012). The term 'litigotiation' (Galanter 1984) was coined to describe a legal process where negotiation between the parties pervades the court process, and proceedings are used to achieve settlement rather than formal adjudication. Negotiation is not simply based on what the parties want but is 'bargaining in the shadow of the law' (Mnookin and Kornhauser 1979) whereby parties' claims and approaches are moulded and tempered by lawyers in response to legal standards and judicial preferences. Lawyers shape client's instructions through the way they present options, always seeking to act in the client's interests (Eekelaar et al 2000) and maintain their engagement with the legal process (Masson 2012) but aware of the court's expectation on them to be realistic and their reputation amongst lawyers and judges based on this (Blumberg 1967; Mather et al 2001; Dickens 2005; Pearce et al 2011).

Settlement (avoiding recourse to court, and specifically a trial) is presented positively in private family law disputes about children or property, as the way to achieve the best solution for the client. This is seen both objectively, in terms of the case outcome (Sarat and Felstiner 1995; Pearce et al 2011) and subjectively, by protecting clients from decisions they have been unable to influence, and from court processes they are likely to find stressful or even humiliating (Lindley 1994; Freeman and Hunt 1998). In private law, there is an expectation that cases should settle (Davis et al 1994; King et al 2009) and even that these matters should not be dealt with by law at all (Eekelaar 2011, discussing the Government's approach to legal aid).

Similarly, in public law child care cases, there is an emphasis on dealing with cases without recourse to the courts if possible (services under s.17 of the Children Act 1989, the use of child protection plans and the formal pre-proceedings process). However, given the atmosphere of distrust between the courts and local authorities, keeping cases out of court may be seen by lawyers and judges as an abuse of local authority power (e.g. the debates about the 'misuse' of s.20, discussed above, and see 13.2, below). Furthermore, given the extent of the processes designed to keep cases out of court, it may be anticipated that the cases which do get that far will be the more intractable and therefore likely to need adjudication. Before the PLO, Masson et al (2008) found almost a quarter of care cases were contested at the final hearing and a third had disputes at earlier stages, mainly about interim orders and assessments; and Pearce et al (2011) noted a far greater willingness for adjudication than in private law matters. However, the fact of a dispute does not indicate anything about its strength, and a key factor is the ethos of care proceedings, to be scrupulously fair to parents, and seen to be fair – so, Pearce et al conclude '... in most care proceedings cases, where cases conclude by an adjudication, the outcome is all too predictable. However, [lawyers'] reputations are not going to be lost in the shared knowledge that a parent will not win but deserves to be allowed to fight their case' (Pearce et al 2011: 154).

### *Decision-making processes before the PLO 2014*

Despite that notable use of adjudication in care proceedings, most issues and cases are resolved without decisions from a judge. What practices and processes are used to achieve this? Box 4a below summarises the elements. The justice of this dynamic and variable process relies on the integrity of the legal representatives and the possibility of judicial decisions.

#### **Box 4a Decision-making in care proceedings**

How decisions are reached	Processes and mechanisms	Levers
Agreement: parents and professionals (and possibly children) develop a common view of the case and how best to resolve it.	Advice and support: to parents from their lawyers, their social worker and other services; to social workers by their lawyers.	Change: (of attitudes, engagement, plans etc) mainly, by the local authority and the parents.
Concession: parents accept an outcome although they do not agree with it or withdraw from proceedings. The LA and/ or children's guardian accept an alternative approach without fully agreeing.	Negotiation and discussion: usually at court and led by the lawyers and/ or the children's guardian. These may narrow issues or resolve the case (or not).	Assessment and evidence: from experts, the children's guardian, the local authority, or elsewhere.
Adjudication: residual mechanism for dealing with matters that are not agreed or conceded; the court also has role of 'selecting' and making the order.	Judicial authority: judicial case management and judge craft.	Time & number of hearings: views and behaviours shift / are shifted during the proceedings and through interactions at court. Change and assessment interact through advice and negotiation, and over time.

Matters which are not adjudicated are agreed or conceded – terms which reflect acceptance or something far less willing, including ceasing to participate in the legal process in any way. Agreement depends on the terms of the proposal and how each party views it as affecting them. It also depends on their views about alternatives and the chances of achieving them, and the advice and support of those on whom they rely, not only professionals but also their family and other confidants. Where a parent is unwilling to accept the local authority's proposal, the authority or other parties or professionals may suggest an alternative, and/ or the parent's lawyer may reinforce advice to accept. Every hearing or advocates' meeting can be an opportunity for negotiation and discussion to resolve some issues, as are meetings between parents and social workers or children's guardians. Changes either to the local

authority plans or to the parent's attitudes and actions may result from decisions at court or elsewhere, such as the allocation of the case to a different social worker or manager, or the beginning or end of a parent's relationship. New evidence or assessments can shift the views of parents, professionals and the local authority by changing the perceived strength of their position or that of the other parties. Through these processes, and over time, a particular outcome may come to be viewed as inevitable or unviable. Being inevitable does not necessarily mean an outcome will be agreed or conceded, but local authority lawyers' dual responsibility to the court and to the local authority (not simply the children's services department) and their position as a 'repeat player' (Galanter 1975) in the court all militate against pressing ahead with proposals which are poorly founded (Grace 1994; Dickens 2005, 2006). (Parents' lawyers are freer to do so, as noted above.)

Commissioning of experts and the passage of time have both been used to resolve care cases by steering the court's decision. Where an expert or experts confirm the views of the children's guardian and the local authority, the judge and all the legal representatives can be reassured that the case has been thoroughly assessed and justice has been done. Commissioning experts added to the length of proceedings, and some were sought partly for this (Pearce et al 2011); 'delay' gave parents time to demonstrate that they had made, and could maintain, changes in their lives. Again, parents' failure to use time this time positively or to remain engaged made the outcome uncontroversial (Masson 2010).

#### *Variation in court process and outcomes*

The existence of wide variations in local authority child care practice is well known, as discussed above. There are also variations in care proceedings, which have been noted since the Children Act 1989 was implemented (Hunt et al 1999). These can be seen in relation to case duration, reliance on experts and contests (Masson et al 2008), in the judicial approach to negotiation and adjudication (Pearce et al 2011), the presence of the child's representatives (Summerfield 2018) and practice in settlement conferences (Brophy 2019). Using Cafcass data, Harwin and colleagues (2018) examined regional variation in care proceedings in England and found differences in the use of the orders between regions with the most marked between the North West and London where, respectively, 47% and 28% of children were made subject to care orders and, conversely, 9% and 25% of children were made subject to supervision orders. There were also differences in the proportion of children subject to other orders and to a further care application within 5 years: 4% in the North West and 8% in London. Differences between regions persisted over time. The researchers did not seek to explain these variations but concluded, 'care demand is not equally distributed across the country and neither is the risk of becoming subject to s.31 proceedings. The risk to children and women was consistently highest in the North West and North East circuits over the entire period' (Harwin et al 2018: 29).

The figures for children subject to care orders reflect the interaction of local authority and court practice: courts cannot make care orders unless local authorities apply for them, but the local authority's view about the need for an order is only one factor in deciding whether to make it. Assessments of the child's needs and the capabilities of the parents or other

potential carers come into play, of course, but in the context of the ‘colonising’ power of the law and the decision-making processes discussed above, and also the local cultures in different courts.

Differences in the way cases are handled in different courts can be understood as the product of the ‘courtroom workgroup’ (Young 2013), ‘community of practice’ (Mather et al 1995) or ‘court culture’ (Nelken 2004) – that is, local practice developed amongst the professionals and judges for ‘getting through the list’ (Mack and Roach Anleu 2007), securing just decisions, maintaining group cohesion and managing uncertainty. Much of the research is focused on criminal justice practice in the USA but Pearce et al (2011) found that ‘communities of practice’ existed in care work in all four areas in their study, developed and maintained through the specialised nature of the work, the steady flow of cases, the relatively small number of lawyers and judges handling them and frequent meetings at court. Judicial continuity is an important factor impacting on the judge’s position in the community; where cases were handled by a series of different judges the practitioners could have more influence, if they took a common view, effectively telling the judge how to progress the case.

Local authority lawyers are also part of the courtroom workgroup; their advice to the children’s services department influences (or more) whether applications are made, the evidence presented, and orders sought (Dickens 2005, 2006). This does not, of course, mean that applications are nodded through but explains, for example, why *Re B-S* resulted in fewer *applications* for placement orders, not just in a higher rate of refusal. Young notes that ‘courtroom workgroups are resistant to changes that threaten locally established cultural norms’ (Young 2013:218) and that change is more likely to be achieved by reforms which alter the workgroup dynamics, giving the example of mandatory sentences which alter the balance of power between judges, defence lawyers and prosecutors. Both the reforms in the PLO and *Re B-S* were such reforms.

#### *Decision-making after the PLO 2014*

The 26 week deadline and the restriction on appointing experts removed two of the key levers for resolving care cases (see above Box 4a). Courts were no longer permitted to adjourn cases except for a limited time to achieve justice; expert appointments were limited to ‘what was necessary’ and could no longer be used as means of strengthening the local authority’s view or giving parents time. More emphasis was placed on judicial case management, judicial decision-making on procedural matters, timely case completion and judicial continuity. Judges maintained their independence, but Designated Family Judges (DFJs) had a formal leadership role (Pearce et al 2011 note that the DFJ can play a crucial role in setting the court culture) and new DFJs were appointed in half of Family Justice Areas with the introduction of the PLO 2014. Adjournment and expert appointment decisions were monitored at judge level, although the results were not published. The Court Rules placed more emphasis on complying with directions: lawyers could not simply agree amongst themselves that action would be postponed, and were told by the President of the Family Division that they ‘must take a more robust approach with the parents’ (Munby

2013a: 7). Children's guardians also had less input, with their attention focused on the beginning and end of the case, the expectation being that they would not attend interim hearings (Cafcass 2013b). Advice, negotiation and judicial authority remained key mechanisms in resolving cases, but the number of hearings was reduced, therefore limiting opportunities for these. In other words, workgroups had to re-establish common views about resolving cases with fewer hearings, in circumstances where there were mixed feelings amongst lawyers about the fairness of the 26 week limit (Justice Committee 2012; Ipsos Mori 2015; Beckett et al 2014a).

#### *Does court process affect outcome?*

When the Family Justice Review proposed a limit for the length of care cases it wanted to improve children's welfare by securing orders more quickly, but never considered that the orders granted might be different. Beckett et al (2016; Beckett and Dickens 2018) in an evaluation of a pilot of the 26 week limit in three London authorities in 2012-13, did not find statistically significant differences in the outcomes of the pre-pilot and pilot cases. However it is important to note that these authorities already had a relatively low proportion of cases ending in adoption plans (14% in the pre-pilot year, which fell to 12%) and high proportions of cases ending in returns to parental care, or kinship care (43% rising to 48%, and 21% rising to 26%, respectively).

A contrasting finding comes from an evaluation of a Court Improvement Programme in Arizona. Delays in dependency (child care) cases have been a major concern across the USA for the last 25 years, and Court Improvement Programmes have been developed to raise standards in these proceedings. One such programme in Arizona involved earlier appointment of counsel, a requirement on parents to attend a meeting to plan their child's care and more restrictive timescales for court decisions. Helemba et al (2002) evaluated the programme and found more thorough examination of the issues and very substantial reductions in the time taken, with permanency decisions made in nearly half the time after the reform and children spending half as long in out of home care pending a final decision. The case outcomes also changed with fewer permanency decisions for adoption (28% as against 38%) and more for re-unification (43% as against 34%).

Helemba et al (2002: 17) conclude that the reforms brought 'dramatic improvements' in how cases were handled but make no comment on the causes or effects of the different outcomes. The reforms, shortening the process and ensuring parents are legally represented, could lead to different results in two distinct ways: one, by encouraging parents to remain involved in the proceedings and assisting them to resolve the issues that resulted in the child's removal; or by discouraging courts from making the most extreme orders, on the basis that more efforts should be made to try to re-unify children with parents or place them in their wider family. Whatever the mechanism, this finding at least raises questions about 'justice' in these cases: whilst enabling parents to remain engaged in the process reflects ideals of procedural justice (Tyler 2004), a different pattern of decisions suggests a lack of substantive justice either before or after the reforms.

#### **4.4 Understanding outcomes**



The 'outcomes of care proceedings' can be understood in two ways – the orders that are made at the end, which can alternatively be considered as outputs of the process, and the subsequent wellbeing of the children. The first is easy to count; the second, much more difficult to measure. Key questions are 'who decides?' and 'when?' In terms of 'who decides?', is it the young person themselves, their carers, a social worker, or an 'expert'? And in terms of time, a child's progress and wellbeing is an ongoing enterprise, many individual characteristics, events, people and services are likely to affect it, for good or ill, over the years. Wellbeing might improve or deteriorate for a range of reasons, not always predictable or necessarily related to the reasons for the care proceedings. Often, the results will be uncertain or ambiguous – for example, it may be that the child does not do very well in foster care, but that does not mean he/she would have done better at home or in kinship care (and those options may simply have not been safe, or available). Some children will bring considerable challenges with them – health, educational or emotional needs – and even if they never achieve at the level of their peers, their progress in relation to their starting point should still be a cause of celebration. Even if a placement breaks down (any sort of placement – adoption, foster care, kinship care, parental care) it may have served a useful purpose while it lasted, and the child takes the benefits with him/her; even if a placement endures, it may not necessarily be a happy or entirely beneficial one for the child. In some ways, it might be best to wait until the child is an adult before passing judgment on whether the care proceedings were successful, whether the outcomes have been 'good', 'good enough' or 'poor'.

Yet for all that, the term 'outcomes' is widely used in policy documents and announcements, held up as though it were unproblematic, and often used to draw a contrast with current practice – for example, to portray current practice as dominated by procedures rather than the child's wellbeing (as in the Munro report), or producing poor outcomes for the children (as in the many media and political criticisms of children's services). Social workers are urged to focus more determinedly on getting better outcomes for children. Clearly it is important to trace what happens to those who have been the subject of statutory intervention, but a better informed and more nuanced approach to outcomes is essential (Dickens et al 2019; Forrester 2017; Axford and Berry 2005).

English law provides two starting points for thinking about outcomes. The Children Act 2004, written in the aftermath of the Victoria Climbié scandal and at the peak of the New Labour era, sets out five aspects of children's wellbeing on which local authorities and partner agencies are required to co-operate: physical and mental health and emotional wellbeing; protection from harm and neglect; education, training and recreation; the contribution made by the child to society; and the child's social and economic wellbeing (Children Act 2004, s.10). For Wales, the same issues are now covered in a longer list in s.2 of the Social Services and Wellbeing (Wales) Act 2014, which came into force in April 2016.

Those are wellbeing goals for all children; with regard to children in care and involved with social care services, there are more specific requirements, which have their roots in the 'looking after children' materials of the 1990s. These were originally developed as part of an initiative to introduce the idea of outcomes to social work thinking (Parker 1988; Ward

1995); they identify seven key dimensions for considering a child's needs and progress, and the help they and their families may require. These are health, education, emotional and behavioural development, identity, family and social relationships, social presentation, and self-care skills. These seven aspects are now specified in the *Care Planning, Placement and Case Review (England) Regulations 2010* (i.e. they are a legal requirement) as areas that must be covered in a child's care plan and considered whenever a child's case is reviewed (and see DfE 2015b). Furthermore, the seven dimensions are also included in the 'Assessment Framework', which is part of the statutory guidance for inter-agency working to safeguard and promote the welfare of children (HM Government 2018: 27). The list appears straightforward, but it is not hard to envisage that a child might be doing well in some areas and not in others – indeed, that is likely to be the case for many children, not only those who are involved with children's social care. Equally, it is easy to see that a child's needs might fall primarily in one of the dimensions, but that affects their progress in others (e.g. health difficulties affecting their attendance at school); or that progress might be variable over time.

High profile cases where children have had unsatisfactory experiences in care give the impression that poor outcomes are the norm rather than the exception for children who are involved with social services. However, research studies over many years have consistently found a rather more positive picture. Useful summaries are given by Forrester et al (2009), Thoburn and Courtney (2011) and Boddy (2013). As regards the outcomes of care proceedings, research shows that local authorities do genuinely try to implement the court-agreed plans even if, for various reasons, they may not always succeed (Hunt and Macleod 1999; Harwin et al 2003; Beckett et al 2014b, 2016; Dickens et al 2015). Studies also show the significant likelihood of returns to parental care breaking down, and poor outcomes for the children in those that continue (e.g. Farmer and Lutman 2012; Biehal et al 2015; Harwin et al 2016, 2019a). Studies of kinship care show the likelihood of these placements continuing, but often the considerable support needs of the carers, from difficulties including poor financial and material conditions, poor health, strained relationships with the child's parents, and challenging behaviour from the children (Hunt et al 2008; Farmer and Moyers 2008; Wade et al 2014; Harwin et al 2019b). As for adoption, studies show high levels of stability but some extremely challenging behaviour from the children as they go through adolescence (Selwyn et al 2014).

As regards outcomes for children in care, one of the often-quoted shortcomings of the care system are the poor educational outcomes for the children. Of course, if one compares the performance of children in care in their GCSEs (usually taken at the age of 16) with the performance of the whole population, they fare considerably worse, but research by Sebba et al (2015) has cast a more sophisticated light on this. They distinguished between children who had been in care long-term (two groups: those who had been in care for over five years before the exams, and those who had been in care for over a year but not as long as five years), and those who had entered in the 12 months before the exams. Using national data, they compared the performance of those groups to the performance of other 'children in need', and the general population. The results show that the within the long-term care

group, the children who had been in care for over five years did better than the ones who had entered over the age of 11; but both those groups had better results than the children in need. The children who did least well of all were the recent entrants. As the authors say, these findings challenge the widespread impression that care itself contributes to poor outcomes:

The findings suggest that care generally provides a protective factor, with early admission to care being associated with consistently better outcomes than those found in the other need groups in the study. Care may benefit later admissions, but it does not fully reverse the damage that may have been done. (Sebba et al 2015: 2)

Statistics on the educational outcomes for children looked after by local authorities in England, published annually by the DfE, exclude children who have been looked after for less than 12 months, and do not categorise according to lengths of time in care (DfE 2018b and previous annual publications). They do compare the children's performance with children in need as well as the general population, and also control for special educational needs. Children in care are much more likely to have special educational needs than children in the general population, and when this is taken into account, the gap between their performance and that of the general population decreases. It is also worth noting that children in care are less likely to be classified as persistent absentees than the general population, and much less so than children in need.

### *Measuring children's wellbeing*

There are a number of ways to measure the outcomes for, and wellbeing of, children in care. It could be by way of a 'hard' measure, such as placement stability or school exam results, but these are not straightforward: as we have seen, exam results have to be understood in context. Placement stability does not in itself guarantee emotional, social or physical wellbeing, although generally children benefit from stable placements and in fact, a substantial majority of children in care do have this. The annual 'stability index' produced by the Children's Commissioner for England found that over 70% of looked after children did not experience a placement change during the year (CCE 2018: 4), although the Commissioner's introduction to the report spoke of children 'pinging around the system' (CCE 2018: 2). The stability index also considers changes of school and changes of social worker and finds that over a two year period only one in ten children experienced none of these three changes.

Another option is to seek the child's own views about their wellbeing. Studies that do this give a generally positive picture – e.g. *Your Shout!* (Timms and Thoburn 2006); *Children in Care and Care Leavers Survey* (CCE 2015); *Bright Spots 'Our Lives, Our Care'* survey (Selwyn et al 2018); *Voices of Children in Foster Care* (CCE 2018). Whilst children might be unhappy about some aspects of their lives, such as contact with their parents or siblings (although some might want more, and others less), instability, household rules, or anxiety about leaving care, overall they had positive experiences. In the '*Our Lives, Our Care*' survey (an on-line survey completed by 2,263 children and young people from 16 local authority areas), over 80% of the children and young people thought that their lives were improving, and

their subjective wellbeing was found to be similar to young people in the general population:

It is important to highlight that being looked after provides most children and young people with a good standard of care, safety, and support...The longer children and young people had spent being looked after the more likely they were to have moderate to high wellbeing. (Selwyn et al 2018: 48-49).

A third option is to ask social workers, or the child's carers or others who know him/her well, to give their assessment of the child's progress and wellbeing. Sinclair et al (2007) used this approach. They investigated the question of what contributes to good outcomes for children in care, considering this in terms of the child's needs and behaviour, the quality of the care they receive, and the policies and practices of the local authority. The researchers gathered information from social worker questionnaires on 4,650 children, along with data from other questionnaires and interviews.

Social workers gave each child a series of ratings for different aspects of their progress (e.g. emotional wellbeing, behaviour, how settled they were, education) on a four point scale from very poor to doing well/few problems. These were combined into an overall wellbeing score. They were also asked to rate the quality of the child's placements, using a three point scale of below average, average and above average. The highest scores were given to adoption placements, then 'ordinary' foster care, and after that kinship foster care. The lowest ratings were for placements with parents.

Overall, the quality of care score had the strongest relationship with the wellbeing score compared with any other variable, but there were important differences between younger and older children (taking 11 years of age as the dividing line), and according to the length of time that the children had been in care. Many moves for younger children, and in the early stages of being in care, are intentional and aimed at moving the child to a permanent placement (e.g. from a short-term placement to a planned long-term placement, or home). So, for the younger children the quality of care was not a significant factor for how long the placement lasted; but it was for the older children. For them, especially those who entered care above the age of 11, moves are more likely to be associated with the quality of care, challenging behaviour, and the young person's own views about being in care and where they wished to live.

A fourth option is to use researcher ratings based on social work records of the child's progress, behaviour and emotional wellbeing. This was the approach used by Farmer and Lutman (2012), and we adopted their rating schedule and scales for this study (see Chapter 3). Farmer and Lutman's study involved 138 children who had become looked after because of neglect and had been returned to their parents during the year 2001. It followed them up 5 years after the return. By that stage, over half the returns had ended, 57%. Of those remaining at home, the researchers considered that a third had poor wellbeing, a third satisfactory and the other third good. Two-thirds of the children had been subject to care proceedings. Reunification had taken place under 34 supervision orders and 32 care orders

(including interim orders) with a plan for the child to live with their parent(s), but court plans did not work out in over 60% of cases (Farmer and Lutman 2012: 184, 189).

The findings about outcomes take us back to the point about the wider culture of society, and the social, economic and political forces that shape commonly held beliefs and values. Research shows that the outcomes of care are relatively good, considering the harm that many of the children will have suffered before coming into care and challenges they face; but the popular impression is that care is unsuccessful and damaging in itself. Research shows that the outcomes of returns home are much more uncertain; but it would not be legal, feasible, or socially acceptable, never to return children to their parents. In our current context, shaped by the harshness and caricatures of austerity, it seems unlikely that a more nuanced and realistic view will prevail – that longer-term outcomes are mixed and uncertain whatever the route taken, but with suitable support and monitoring, good results can be achieved. There are no guarantees in any form of care, and inevitably, wherever they are placed, some children will suffer further harm, and some will have less happy childhoods than others (Dingwall et al 1983; Dickens et al 2019). That is not an excuse to give up, rather a call to make the best assessments and plans one can, and for the right types of support to be available to the children and their carers.

#### **4.5 Conclusion and summary**

In summary, the 26 week deadline and associated changes may have appeared to limit the role of the court in child care cases, but a wider view reveals a complex, hotly contested and highly contextual terrain. Drawing on social work and socio-legal literature, the chapter has shown that context to be shaped by two key issues – control and culture. The culture in local authorities, not just the needs of the children and the features of the cases, plays a large part in determining which cases are taken to court; the culture of the local courts determines how the cases are presented, argued and resolved. These powerful local cultures lie behind the variations in social work practice and court outcomes. The hidden and informal processes in local authorities and the courts, not only the overt and formal ones, shape the decisions that are made about children and families.

Along with the local cultures, there are the battles for control of social work practice and standards, struggles over which agencies and what principles shape it and dictate the work with children and families – the fundamental tensions and inter-dependencies between courts and local authorities, law and welfare, local freedoms and national standards, procedure and flexibility, family support and child protection. The 26 week rule, an apparently simple (albeit controversial) administrative change, turns out to open up a minefield of different values, and the complex interaction of process and outcomes.

## PART 2: THE USE OF CARE PROCEEDINGS AND PRE-PROCEEDINGS

### Chapter 5 Intervention to protect children

#### Part 1: Bringing care proceedings

##### 5.1 Introduction

The decision to bring care proceedings is formally a matter for the local authority (Children Act 1989, s.31(1)(9)) but the courts have considerable influence both directly through interpreting legislation and ordering investigations, and indirectly, by indicating their expectations. Whilst reported cases from the higher courts and senior judiciary set national standards, family judges have considerable influence locally. The courts interpret the threshold condition and set out requirements for showing that they are met, for example in *Re A* (2015), where the local authority was castigated for its whole approach to establishing the case for intervention. Judges hearing cases about children's welfare can direct the local authority to investigate and make an interim order; the local authority must consider bringing care proceedings and report to the court its reasons if it does not do so (s.37). Use of this power appears relatively uncommon (MoJ 2018a: table 4); there were 3 cases in the study that resulted from s.37 directions, all in the post reform sample, S2. Judges can indicate their views about timeliness in applications (*Re N* 2015) and have found parents and children's article 8 rights have been breached by delaying proceedings (*Re H* 2014; *Northamptonshire CC v AS* 2015).

The analysis presented here draws on the interviews with local authority staff and the data from the court papers in both samples of cases (S1 2009-10 applications; S2 2014-15 applications) to examine: the processes local authorities used to decide whether to bring care proceedings; the key factors in deciding to apply to the court; and the characteristics of the cases brought to court. It does so in order to explore the impact of the PLO reforms on the local authorities' decision-making and applications, particularly how they responded to the expectation that assessments would be complete and care plans clear when proceedings were brought, and the impact the PLO had on local authority practice. Using data from both samples of cases makes it possible to consider objectively whether the threshold for intervention, or the types of cases brought to court, changed in these local authorities from 2009-10 to 2014-15.

This chapter considers only cases with care proceedings and does not compare the use of the pre-proceedings process, nor its relative success in diverting cases from proceedings in 2014-15. This reflected the Study's aims and design, and the redesign of the court process. The PLO 2014 did not include pre-proceedings documents (the letter before proceedings, list of concerns and outcome of the meeting) in the (slimmed down) list of documents to be filed with the court, making it more difficult to establish whether, when and how the pre-proceedings process was used. The social worker's statement might mention it, but omission could not be taken to mean that no attempts had been made to do so.

Consequently, a high proportion of cases in the second sample (S2) had missing data on pre-proceedings variables, limiting the reliability of the analysis. However, the study was able to follow up most of the cases in the first sample (S1) which were diverted from care proceedings; the long-term effectiveness of that diversion is discussed in Chapter 6.

The chapter starts by summarising the findings about decisions to use the pre-proceedings process in the earlier study in order to highlight the local authorities' somewhat different approaches and considerations once the PLO had been implemented. It then outlines and compares the processes the local authorities used to decide whether to bring proceedings for the two samples and discusses the rationales for them given by interviewees before considering the main factors which drove applications to the court. The second part of the chapter compares the characteristics of the families and children in the two samples and their involvement with children's services and the courts. It concludes with a discussion about what these findings suggest about change to the threshold for intervention or the increase in the use of care proceedings.

## **5.2 Pre-proceedings and care proceedings**

### *Earlier Findings*

*Partnership by law?* reported the findings of our study of the pre-proceedings process in the early years of its operation. It followed a sample of cases from the initial decision about use of the formal pre-proceedings process to the end of care proceedings for the 170 cases that entered proceedings and another 32 cases where proceedings were not brought by the Study local authorities. (Pre-proceedings meetings were observed in another sample of 34 cases). The Study identified some uncertainty amongst lawyers, social work managers and social workers about the role and function of meetings where decisions were made about entering the formal pre-proceedings process or starting court proceedings. This echoed earlier ambiguity in the roles of lawyers and social work managers in deciding to bring proceedings (Dickens 2005, 2006). At one end of the spectrum of practice were meetings which appeared more like social work supervision where both a senior social work manager and a lawyer discussed suggestions for additional social work either before or within formal pre-proceedings. At the other end, there were meetings which focused on the threshold for care proceedings, the evidence available to establish this and whether proceedings should be issued immediately, or time allowed to hold a pre-proceeding meeting with parents and their lawyer. The researchers concluded that this variation reflected uncertainty about the threshold for entering the pre-proceedings process, particularly whether cases must meet the significant harm threshold for care proceedings; the appropriate response to breaches of written agreements made in pre-proceedings; and whether it was a better use of resources to start proceedings so that the court could order the assessments it needed. (Masson et al 2013: 75-8).

The study also found considerable drift in cases within pre-proceedings. The original Guidance (DCSF 2008) did not set timescales for the process, nor did local authorities routinely monitor or review cases in the process or inform parents that the process had ended, except impliedly by issuing proceedings. Cases of neglect, where care improved and

declined repeatedly were particularly likely to drift. Some of the local authorities introduced reviews including meetings involving parents or internal monitoring panels but these were neither widely used nor always effective. Indeed, the focus on pre-proceedings was lost as time passed without improvement and it could appear harder to go to court because the child's circumstances had been accepted by children's services (Masson et al 2013: 138-143).

By the end of the Study, local authorities were clearer about their use of pre-proceedings. There was a widespread view amongst social workers, lawyers and managers that the pre-proceedings process should be used where time and the child's safety allowed: it was fairer to parents and enabled care proceedings to be avoided in between a quarter and a third of cases (Masson et al 2013: 83-89, 154). However, it was clear from the research that the courts did not accept local authority assessments undertaken before the application to court; nor did the process shorten care proceedings as intended (p.174). In this context, pre-proceedings appeared to have more potential as a social work process, a step up from a child protection plan, providing a further opportunity to engage parents to make or maintain change than for preparing assessments for proceedings (p.160) but, of course, parents' response (or lack of it) to the process could strengthen the case for proceedings and the need to use them.

#### *Reforming the pre-proceedings process*

The PLO reforms included revised Statutory Guidance to local authorities on using the pre-proceedings process within a volume on the powers of the court and the new care proceedings process (DfE 2014d; WAG 2014). This required local authorities to hold *a legal planning meeting* (not merely take legal advice) before deciding to use the pre-proceedings process or issue care proceedings (DfE 2014d: 2.25) and emphasised the need for clear timescales (2.33-4), not delaying essential applications despite missing documentation (2.40) and a requirement to 'quality assure' all applications to court (2.44). Specific time periods were indicated for pre-proceedings in a flow-chart (Annex A). The pre-proceedings process was both a time for further attempts to engage parents (2.20), and for assessing parents' capacity to care, their support needs and the potential of their wider family as carers or supports. Specifically, local authorities were encouraged to arrange family group conferences to explore support for parents or care for children from within their family (2.21-24). It was clear that using the process retained its double function to engage parents to avoid proceedings and to ensure timely preparation for court in reforms with a focus on avoiding delay.

#### **Pre-proceedings under the PLO 2014**

In all the Study authorities the pre-proceedings process continued to have a major role in managing risk and improving children's care in 2014-15. It also provided a period of increased scrutiny of the family, the case and the social worker during which evidence was gathered, assessments undertaken, and the potential for support or care from within the family explored. The decision to enter pre-proceedings was made formally at a Panel but did not require approval at the same level as proceedings, see below, Box 5b.



## *Timescales*

In response to concerns expressed about drift in the earlier research and the Department for Education Guidance, each authority had at least notional time limits for the pre-proceedings process, with the possibility of curtailing or extending depending on the parents' engagement. Three months was commonly referred to but may not have been adhered to in practice. Two local authorities had formal tracking processes (LA C which had instituted these at the time of our earlier research and LA B) where the Principal Social Worker acknowledged that in the past, *'we did for a period of time have Pre-Proceedings that were going on for far too long.'* Reviews of pre-proceedings cases had become routine, often after 6 weeks and often involving a review Legal Planning Meeting (LPM) or Panel to discuss what else needed to be done and whether proceedings should be authorised.

LA D allowed somewhat longer; a clear time-line had been established for all the various pre-proceedings actions, letters, the meeting, parenting and kin assessment etc, that had to be completed once agreement to use the process had been given. Cases were reviewed after 12 weeks and there was an expectation that a family would remain in the process for no more than 26 weeks; proceedings would be started, alternative care agreed, or sufficient change would have been achieved in the child's care by this point. However, there had been concerns about 'slippage' so markers were being introduced on the IT system so that pre-proceedings could be more easily monitored. A local authority lawyer commented:

*'We are all so busy and tied up with what we are doing in courts that we don't give enough time to what is in pre-proceedings. .... Into the court process, the scrutiny is all from the court and is a very forensic type of scrutiny and very pressurised, but actually I think we need to bring more of that to the pre-proceedings process.'* LA D LAS

And from the perspective of social workers and managers, timescales meant thinking all the time about what had to be done and by when, and the same amount of time was not available for every case:

*'...in your head you have got, we will enter pre-proceedings at this month, but actually prior to that you have to get a legal panel, and prior to that you have to write your paperwork. So they are fairly straightforward ones. We have had cases where we have had cases stepped up from Early Help and things have been so bad that we have almost immediately needed to seek legal advice, because everything has been tried and tested with Early Help and not worked. So if that has not worked, where do we go?'* LA D SWM1

## *Work during pre-proceedings*

Tightening timescales to avoid drift can also look like rushing into proceedings, giving parents little time to change. There was also substantial work to be done to ensure any application to court was prepared beyond any assessment that parents were not providing / able to provide good-enough care, particularly exploring placements in the family and undertaking assessment of potential carers. The limited time in proceedings increased the pressure during the pre-proceedings period:

*‘Once they go into court and an Interim Care Order is granted, they have got six months or less. So, you know the clock is ticking and [doing] as much of the work that they can do before proceedings as possible is to their advantage.’ LA F IRO*

The potential for family placements necessitated identifying family members, getting parents’ agreement to contacting relatives and arranging a family meeting to discuss their views and support, either a Family Network Meeting (FNW) and / or a Family Group Conference (FGC) (see box 5a).

**Box 5a: Family Network Meetings and Family Group Conferences compared**

Family Network Meeting	Family Group Conference
Organised by the local authority, usually by the child and family social worker holding the case.	Facilitated by a co-ordinator who is independent of the practitioners working with the family.
The child and family social worker is present during the family's discussion and may help shape the family's plan.	Meeting follows format which allows private family time during which family make a plan for support and care. Local authority accepts plan unless it does not safeguard child (FRG 2011).

Such meetings are a major element in pre-proceedings work, both to identify support for the parents to avoid proceedings and/or carers should the child need to be looked after. There are clear differences between the different types of meeting (see above, Box 5a). Attempts to be inclusive and work at the family’s pace may mean that FGCs take longer to arrange. FNM are a key element of the *Signs of Safety* (SoS) approach (Turnell and Edwards 1999). One recommendation of an FNM may be to hold an FGC. Family meetings were common but social workers had some difficulty both getting the information they needed from parents and engaging relatives, before proceedings:

*‘One of the things that we still really struggle with in pre-proceedings is to get people to put alternative family members forward, even with legal advice. ...We will put a date by which they need to give us these [names] and then that date will fly by and we will organise a Family Group Conference and then people will still pop up at a later date.’ LA E SWM1*

Difficulties outside proceedings and a focus on avoiding delay had to be weighed against the emphasis on being fair and avoiding care proceedings. Getting the case before the court could be seen as a means of engaging parents and kin carers; and there was little point in delaying decisions which appeared inevitable.

This necessarily involved making assumptions, but there were many cases where the local authority’s history of intervention in a family provided a strong basis for these, in a context where evidence and plans would be closely scrutinized by the court. The reflection of this Team Manager resonated through interviews in other local authorities, and with Broadhurst et al’s (2018a) finding that more care applications are made shortly after birth.

*‘I would say probably with much younger children, we [are] probably entering proceedings much earlier and again more so with families that have had previous involvement or who*

*have had continuous involvement and then maybe, you know, a number of children over the years.'* LA A SWM3

The pre-proceedings process was used pre-birth but not enough time was allowed for assessments before the birth, as was seen previously (Masson and Dickens 2015):

*'We try to encourage [use of] pre-proceedings pre-birth because that can be really effective. Again, a resource issue crops up in that the team probably isn't big enough to pick all these cases up and get to Legal Panel early enough. ...It might be a month perhaps before baby is born and sometimes even later than that. And I think that is a pity, because I think there are ways in which the plan at birth could usefully be negotiated through several meetings....'* LA E LAS

Where proceedings were inevitable or imminent, the pre-proceedings letter could be used to inform parents of the intention to issue (DfE 2014d: 2.29, 36 and Annex B), so they could get legal advice and even attend a meeting about the proceedings and the arrangements for the children with a solicitor before the proceedings.

*'If the case is urgent, like particularly urgent like you need the children out now or within say less than a week I would normally bypass the full procedure and send a letter of intention to issue and then just issue. So at that point you would not have the full protocol but you would still send the letter, so the parents are advised as to what is going on and that they have got the opportunity to get the free legal advice, but they don't get a chance to have their say beforehand because the concerns are too high.'* LA A LAS

However, such letters were only referred to in LA A, which had been the main user in the *Pre-Proceedings Study* suggesting that they were rarely used by the other local authorities.

The courts also encouraged early applications and using care proceedings rather than arranging care by kin in other ways. From 2014 onwards, local authorities were repeatedly criticized in reported judgments for delaying applications to court (*Re H* 2014; *London Borough of Brent v MS* 2015). In a private family law case for a CAO for children to remain with their grandmother, Munby P in the Court of Appeal was also highly critical of an arrangement whereby a local authority had supported the placement with the grandmother, rather than using care proceedings (*Re W (Children)* 2014). This was not simply a concern of local authority lawyers, a social worker reflected:

*'I think it can feel like an uncomfortable place to try to work that plan out, outside of court, because really if you are saying that child should not go home, then the court would prefer that we put that case before the court in a public proceedings, than attempt to try and bypass care proceedings and support a granny or an aunt, or whatever.'* LA F SWM2

This quotation also illustrates the influence that court practice can have on local authority thinking, how using court proceedings can change the way an arrangement is viewed and how court action, particularly care proceedings become essential.

*Effects of the reforms on the pre-proceedings process*

The reformed process for care proceedings has been linked to two distinct criticisms relating to pre-proceedings. First, that it was likely to result in delays in bringing proceedings because of the requirement of pre-proceedings assessments (Ipsos Mori 2014). Secondly, in the *Care Crisis Review*, that the focus during pre-proceedings was on preparing for court rather than preventing care proceedings (FRG 2018). It seemed clear from the interviews in all the Study local authorities that new and concerted efforts were being made to avoid drift during pre-proceedings and progress cases into court where proceedings were required. There appeared to be a clearer focus that using pre-proceedings was a route to care proceedings unless cases were diverted. The threshold was clearer and any suggestion that pre-proceedings might be used for cases that were not, potentially, destined for care proceedings had been dispelled. Preparing for proceedings required substantial work with families - completing assessments, discussing supports and preparing plans, which might appear to be 'just about proceedings' but had deeper roots exploring strengths and ways to meet children's needs. Communication was the key to helping parents to understand that changes were essential but that proceedings were not inevitable, although in times of high emotion, what has been said and what has been heard may be very different.

However, unlike our earlier study, this project was not designed to explore pre-proceedings practice, nor was our post-reform sample constructed to allow us to evaluate the continued effectiveness of pre-proceedings in diverting cases from care. Therefore, we cannot assess whether the balance between preparing for court and working to prevent the need for court which we identified previously has shifted following the care proceedings reforms. These limitations also impact on any conclusions about duration and pace of pre-proceedings work. All these matters need to be considered in another broad study of pre-proceedings. In the meantime, the introduction of recording and tracking mechanisms would help local authorities to assess the work their social workers and lawyers are doing in this respect.

Where there is co-operation between the parents and local authority in working to improve a child's care, proceedings are not necessary and so it cannot be wrong to continue without them. An alternative approach of rushing to court is oppressive to parents, wasteful of local authority resources and adds to the pressure on the court. It also undermines a fundamental principle that state services should not need a court's authority to carry out work within their ordinary powers.

### **5.3 The decision to bring care proceedings**

The PLO placed more demands on local authorities because it 'front-loaded' the care proceedings process so that proceedings could be decided in 26 weeks. Cases required more and better preparation with assessments and plans all filed with the application, rather than left to be commissioned by the court or developed in the light of what emerged. More was also expected in terms of the contents and quality of documents with social workers taking a more 'succinct and analytical' (DfE 2014d: 3.5) approach in preparing their evidence and providing 'a holistic analysis', setting out the pros and cons of 'all realistic options' (*Re B-S* 2013).

### **Box 5b Procedures for authorising care proceedings**

**LA A** The social worker raises concerns with their Team Manager who outlines concerns to the Service Manager, who can approve a Legal Strategy Meeting (LSM). Child Protection Chairs and IROs may also propose referral to an LSM. Lawyers are allocated LSMs and receive documents from the SW or TM about the family and circumstances. The LSM is attended by the lawyer, social worker, family support worker and Team Manager. If the s.31 threshold is met the case can enter the pre-proceedings process (PPP). The meeting considers the plan, the assessments required and the timescale. Care proceedings and foster placements are authorised after discussion at a weekly Panel, chaired by the Head of Service with representatives from Education, Early Help, Fostering and a Child Care Manager, which receives written accounts of the family composition and history, services provided and actions taken to prevent further intervention.

**LA B** The Legal Panel which decides on the use of care proceedings is held weekly, considers up to 3 cases and lasts half a day. It involves the Head of Service, the senior lawyer, the social worker and their line manager, the case progression manager, a psychologist from the Clinical Practitioner Team, someone from the Permanence Team plus others with knowledge of the family eg the IRO. The lawyer who is allocated to the case does not attend. The social worker presents the case to panel and must submit paperwork, drafts for the chronology, genogram, social work evidence and proposed care plan a week in advance. As well as approving (or not) the application to court the Panel identifies actions that must be tried in advance and any further assessments required.

**LA C** The Legal Panel is held once a month and chaired by the Deputy Head of Service. It considers the use of care proceedings in cases which have already been considered at a Legal Planning Meeting. The LPM determines whether the s.31 threshold has been met and the use of PPP. Social workers submit case documentation including chronologies and assessment reports. Cases considered for proceedings including children on s.20 are subject to two levels of scrutiny before applications are brought to court.

**LA D** The Legal Panel, consisting of a lawyer, the Principal Social Worker, a Service Manager or the Assistant Director, meets each week to scrutinise cases referred by social work teams and decide whether to initiate care proceedings or enter PPP. The social worker must prepare a chronology, draft social work evidence and may include a recent CP conference report. This is sent to the Service Manager and the Head of Service who authorises the case being presented to the Legal Panel. The social worker attends with the TM to answer questions from the Panel. The Panel also advises on further assessments. Minutes are sent to eg the Adoption and Kinship Teams so they can identify the need for placements and kin assessments.

**LA E** A weekly Legal Panel consisting of a senior lawyer and a service manager meets social workers and Team Managers and decides on the use of pre-proceedings and care proceedings. Social workers must complete a form with details of the issues in the case, their analysis and proposed care plan. Care proceedings (or PPP) cannot be started unless the Legal Panel approves. There is also an Entry to Care Panel which scrutinizes care plans and agrees allocation of care resources. There is no set order for cases to be presented to the two Panels.

**LA F** The Legal Panel, consisting of a solicitor, a Service Manager, members of the family support and fostering teams and the Consultant Social Worker meets weekly and receives written information prepared by the social worker especially for the Panel, including an analysis of the proposed intervention and plan, and related documents such as the core assessment, police reports etc. Use of pre-proceedings is considered separately because of the pressure on time for proposed proceedings. The decision on threshold is made by the solicitor but whether proceedings are then issued is determined by the Service Manager.

Social workers completed the social work evidence template (SWET) a pro forma devised to support this (or an alternative, preferred by the local court). These demands were a factor in some of the local authorities changing their process for deciding whether care proceedings should be brought. Other factors were their concerns about increases in the numbers of care proceedings (see fig 3.1 above), pressure on resources, including legal resources and a need for more robust decision-making applying a single approach across the authority.

*‘Prior to [establishing the Panel] instructions that we had came directly from the individual social work teams and that led to inconsistencies in thresholds and ....to cases being issued that shouldn't have been ...and perhaps ... to some not being issued at all.... [The Panel] has led to far more consistency in terms of what we are presenting to the court and the general direction of our cases and, I would like to think, to better social work practice in terms of meeting the threshold for a legal process.’* LA D LAS

The process in each of the authorities is outlined in Box 5b, above. In comparison with practices in 2010, there was apparently greater scrutiny of proposals to bring proceedings through: separating out the question of threshold (LAs A, C and D) or otherwise indicating (LA F) that threshold is just a precondition for proceedings (Mackay 1991); requiring authorisation from a higher level manager (LAs A, C and D); enlarging the decision-making panel (LAs A and B); requiring written submissions (LA F) but the other local authorities, which had previously required this required more, usually drafts of application documents.

Interviewees commented that the Panel's expectations were in line with what the court required – analysis. Social workers had to be able to explain what they wanted to achieve through care proceedings, what they had considered, the pros and cons of their plan and what it was based on:

*‘I am really trying to get the Social Workers to think about the analysis right from the word go ... what we are saying to Social Workers when they come to Panel now is, “What is the*

*legal intervention you are asking for?” “What is your plan?” .... We are finding that that is really focusing them ....and then there is a discussion about - “How have you reached that decision?” and “What evidence are you basing that on?”” LA B SWM1*

*‘That can be quite a painful process sometimes, because you [the social worker] are sitting in front of a panel, that know nothing about the case except the paperwork...And I know that part of that is gate-keeping and part of that is about limited placements available in the local authority at the moment.... So, you are going in there and you are very aware of the agenda, politics, the financial pressures. So we are not just having to convince people of the threshold here, ...[also] this is worth it actually and we do need to do it.... [You] really feel like you have been pulled through the mill really. Worse than being at court sometimes.’ LA D SWM2*

*‘I think there is a difference between ‘meeting a threshold’ and it being the right thing to do ...I think not understanding that, the threshold is the same for the two and if you go into Pre-Proceedings you need to ...have already decided that proceedings are what needs to happen in the best interests of the child unless certain expectations are met by the family within a specified and short period of time.’ LA B SWM4*

Ultimately, the local authority had to consider what was best for the child, which could mean accepting that care proceedings might not improve the outcome for the child and, at least in the case of older children, who might be seen as able to protect themselves, deciding not to apply to court.

*‘The options for a [13 year-old] child [are] quite limited, so although they may be at significant risk, there is not always enough thought about what we’re going to do in the future.... We can remove and we can go down the care proceedings route, but what are we actually going to do with this child? Where is this child going to go? How are we going to change their long-term outcomes? .... And it is difficult because you genuinely can’t leave the child where they are, but that doesn’t necessarily mean that your options will open up.’ LA C IRO1*

The reforms resulted in local authorities increasing the scrutiny of proposals to bring care proceedings and social workers carrying out more court-orientated work both for the initial scrutiny meeting and during pre-proceedings in order to be able to meet the 26 week timescale in proceedings. One consequence of this greater commitment of time may have been that social workers were more invested in the use of the court when they prepared/presented a case to Panel for authority to start proceedings. Secondly, both the work undertaken and the encouragement to be more analytical to meet the court’s new requirements for social work evidence may have resulted in cases being presented to Panel more cogently and led Panels to authorise applications despite giving them closer consideration. This study is not able to reach conclusions on these points, but later findings will establish that, after the reforms, proceedings were used in respect of more children who neither entered the care system nor moved to the care of family members during proceedings and remained at home at the end of proceedings (see Chapters 8 and 9). One implication of this finding is that it might have been possible to achieve as much of the

necessary change for the child through social work intervention without proceedings. Alternatively, it may indicate that the involvement of a judge can induce some parents to make changes which social workers alone have not, as suggested in relation to the Family Drug and Alcohol Court (FDAC) (Harwin et al 2014). A third possibility is that shortening the length of proceedings and/or case law decisions made courts less willing to make other, more intrusive, orders even though there was little evidence of change or improvement in parents' capacity to care.

## **Part 2: The families subject to care proceedings and their circumstances**

This section draws on the court documents, principally the application form, the chronology and social work statement and the children's guardian's analyses, to provide demographic information about the children, parents and families subject to proceedings, their involvement with children's services and the circumstances that led to the care proceedings. These documents provide detailed information about the children subject to care proceedings and their circumstances, and crucially, are a main source of information to the court. They form the basis for the court's decision both indirectly by influencing the advice to the parties and the stance they take in the proceedings and directly, by informing the judge.

Of course, these documents present a partial picture of the families involved in care proceedings (Scott 1990); they are drafted to make a case for compulsory intervention, relate to a limited time period and are shaped by court forms and statement templates. Specifically, under the PLO, local authorities are expected to file shorter, more succinct chronologies and more analytical evidence statements (Munby 2013a; Law Society 2013; Cafcass and ADCS 2013). Changes in the application documentation were obvious to the researchers; it was shorter and less descriptive, with more focus on analysis.

### *Index children*

For the *Pre-Proceedings Study* (Masson et al 2013) the focus was largely on one child in the family, the index child. This child was identified from the local authority legal department files as the child whose circumstances had precipitated the intervention, or where the case concerned the circumstances of all the children in the family, as in cases of neglect, the youngest child. The original database was structured by family, although some data was analysed by child, for example the orders granted. Linking to the administrative datasets and focussing on outcomes for individual children required a child-level dataset; the sample 1 (S1) data were restructured to achieve this, and sample 2 (S2) data were collected by child (see Chapter 3). Index children were identified for S2 so the ability to analyse in this way was retained; this is used when considering families and their circumstances, to avoid double counting. In many of the analyses, separate figures for S1 and S2 are provided to show their similarity and differences. This is not done where no differences are apparent, and where the numbers are very small. Where differences reach statistical significance, this is noted in the text.



## 5.4 The children subject to care proceedings and their parents

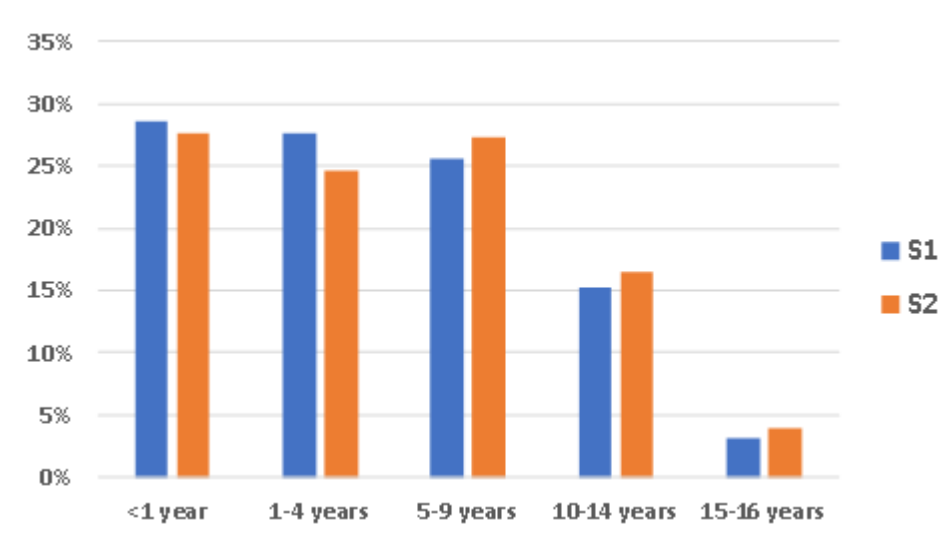
### Children

Figure 5.1 shows the ages of all children in the Study, separating S1 and S2 and using the DfE's age groupings. Overall there was very little difference between the two samples. The mean age of S1 was 62.13 months, slightly younger than S2, 65.75 months; and a higher percentage of S1 children were under the age of 5 years, 56.2% compared with 52.1% of S2. Most (92.5%) of care applications in the Study were the first application for the child; the 46 children who had previously been subject to care proceedings were older, ~ 92 months at re-application compared with ~ 63 months ( $p = 0.001$ ).

There was a total of 173 children under the age of 1 year in the sample (S1=83, S2=90); 160 children aged 1 – 4 years, 80 in each sample; 163 children aged 5-9 years (S1=74, S2 = 89); 98 aged 10- 14 years (S1= 44, S2=54) and just 22 aged 15 years or over (S1=8, S2=13).

Broadhurst et al (2018a) have noted the increase in the number of children subject to care proceedings in the first months after birth and reflected that this may suggest precipitate action or a recognition of the importance of intervening early (p 35) and comment that linkage to social care data is necessary to understand these children's different trajectories

**Figure 5.1: Children's ages in the two samples (using DfE age groupings)**



(return home, foster care, kin placement and adoption). This study can provide that for the infants in the study, 96 of whom (S1=40, S2= 56) were subject to planned care proceedings following their birth, and for the older children in the sample, see Chapters 8, 10 and 11.

Care proceedings are rarely used for children aged 15 or over; it is far more common for children of this age to be accommodated under s.20 (DfE 2017a; Sinclair et al 2007). Older children were sometimes included in proceedings for younger siblings, these accounted for the majority of applications relating to children over 10 years. If only single child applications are considered, there were just 31 in the sample (5%) for a child over 10 years, and only 8 for children over 15 years. The local authority sought a care order for these children in order to have more control, for example for a child who was

involved with gangs or had been convicted of violent offences but was being released from a Youth Justice placement. Some of these applications were accompanied by secure accommodation applications.

**Example: Tomas 3511**

Care proceedings were brought in respect of a 15 year old East European boy who was currently on remand having committed serious offences while accommodated in residential care. Concern that the case might be dropped, and the boy released, led to a decision to start care proceedings and seek a secure accommodation order on the basis that he was a danger to others.

The similarities in the two samples concealed considerable differences at local authority level. Comparing the mean ages of the children in the two samples, the S2 sample was younger in LAs B and D by 29 months and 8 months respectively, older in LAs C, E and by 5, 21 and 29 months respectively but no different in LA A. The composition of the random local authority samples generally accounted for these differences, for example, in LA D there was a larger proportion of children aged under 1 year in S2 (33%, 20; S1=24%, 13) and LA F a much larger proportion of the sample was over the age of 10 years (S2=30%, 18; S1=17%, 4). In LA C the study samples contained almost all of the children subject to care proceedings in the sampling periods (see table 3.1) so a difference in the samples may reflect changes in practice. Elsewhere, the subsamples are too small for conclusions on practice change. However, these figures have implications for care planning and court orders for these children, see Chapter 9.

*Mothers*

There was little difference in the two samples of mothers, the figures here relate to the whole sample, S1 and S2 combined. The children's mothers were aged from 14 years to 50 years at the time of the court application, with a median age of 30 years. There were 37 mothers (10%) under the age of 20 years. Just over half the mothers were said to be single, including almost 10% who were widowed, divorced or separated, and just under half were married (8%), cohabiting (24%) or living apart but in a relationship (15%). Four mothers were known to have died; children being orphaned had precipitated two care applications. Over 80% of the mothers had been born in the UK, another 10% were long-term migrants and the remaining 6% were EU citizens, recent immigrants or refugee/asylum seekers; 27 mothers were said by the local authority to require an interpreter for the court proceedings. At the time of the application, two-thirds of the mothers were not living with a partner, a quarter were living with the birth father and the others were with a partner, who was not the children's father. One in eight of the women were living with relatives, most commonly their own parents. Just under 10% of the mothers were employed, mostly part-time and a further 5% were actively seeking work; the figures for mothers' employment reflect the (young) age of their children their health and other factors. Unemployment and poor health also contribute to the families' poverty and social exclusion (Morris et al 2018). More details of the mothers' circumstances and the problems which had contributed to the decision to use care proceedings are discussed below.

## *Fathers*

Local authority social workers face challenges engaging fathers (Scourfield 2015; Maxwell et al 2012; Bedston et al 2019); fathers, particularly abusive fathers, can be elusive and resistant as well as controlling. Child protection processes operate as a form of 'gatekeeping for men which can facilitate or inhibit their involvement' (Brandon et al 2017: 1). However, the court rules require fathers to be notified of care proceedings, and fathers with parental responsibility are respondents with rights to legal aid for representation. Although local authorities had substantial information for many fathers, the identity of the father was unknown in almost 10% of cases and was incorrectly attributed in others as DNA tests later made clear. In just over half the cases (54%, 200) the index child's father was thought to have parental responsibility, a status dependent on marriage to the mother or being named on the birth certificate. Two-thirds of the fathers were known to have been born in the UK, but their residence status was unknown for 20%; the majority of the others were long-term immigrants; there were also 8 fathers with insecure immigration status and 7 who were resident overseas. Amongst the fathers were 11 reported to require an interpreter for the care proceedings.

In 37% of cases, the index child's father was known to be single, separated or divorced, 10% to be married and another 30% to be cohabiting or living apart together; the family circumstances of the others were unclear. Just under a quarter (84) were living with the birth mother, 11% with a partner other than the birth mother, 40% were not living with a partner, 16 were in custody and 8 were known to have died. One in eight of the index child's fathers were living with relatives, mainly paternal relatives but, where this was known, the majority was living independently. Only 1 in 6 fathers was known to be employed, most of these were working full-time, and another quarter were reported to be seeking work; information about employment was not available for over 40% of index children's fathers, reflecting both the more limited information available about them and uncertainty about the relevance of father's employment to care proceedings.

The index child's birth father was not the only father who could be a party to the proceedings. At least 13 other fathers were identified during proceedings and became parties to the proceedings, usually because they wanted care of, or contact with, a child in the proceedings.

## *Family size and composition*

The majority (63%) of the applications concerned only one child but only a minority of the children (29%) were 'only children'. Nearly a quarter of cases (23%) involved two and 14% three or more children, with 7 cases involving 40 children in total. The children had siblings and half siblings living elsewhere who were not involved in the sample proceedings; a quarter of the families included children with different fathers. In nearly every case the care proceedings involved all the children, aged under 15 years, currently living in the household. There were only six families where this was not the case where the other children's care was not a cause for concern.

56 (15%) of the mothers had other children, no longer in their care, mostly through previous care proceedings but also through arrangements with relatives; some mothers had experienced such loss repeatedly (see Broadhurst et al 2017a). Twenty-one mothers had babies during the care proceedings, and they too mostly became the subjects of care proceedings. Fathers too had other children, but this information was far less clear (Bedston et al 2019), particularly where fathers played little part in the care proceedings. Where fathers had other children almost all these children were living with their mothers, apart from the father, but some were in the care of other relatives.

When the decision was made to bring care proceedings, mothers had care of their children in 64% of cases, either alone (42%) or with the father (19%) or their current partner (3%). There were just 15 families where the father was caring for the child alone or with a partner. Other children were in the care of relatives (8%), with unrelated foster carers (13%), in hospital (6%) or elsewhere, including custody, residential schools or with friends.

### *Ethnicity*

The ethnic mix of the six local authorities differed considerably. Whereas almost all of the children in the sample from Area A (a Shire county) were white British, this was the case for a quarter or fewer of those from the two London boroughs; approximately three-quarters of the children in the other three areas were white British. Conversely, over 40% of children from Areas B and C had mixed ethnicity and there were comparatively few such children in the other areas.

The 2001 Census Groups were used to identify the ethnicity of children and their parents. There was very little difference between the two samples. Overall, the families were predominantly white British: 262 (70.8%) of the mothers; 220 (65.1%) of the fathers and 400 (64.9% of the children) were white British. There were 61 children with mixed ethnicity, white British and Caribbean; 22 white British and black African; 12 white and Asian; and 33 with other mixed ethnicities (in all, 20.8% of the sample). There were 11 (3%) 'Other White' children, mainly from Eastern Europe, 34 (5.5%) black African children, 14 (2.3%) Pakistani children and 11 children in all from Romany, Chinese, Indian and Arab communities.

Both the parents' residence status and the children's ethnicity may have an impact on the children's needs and the support available from the wider family to meet them. Family support and potential carers may live overseas; children may need placements which not only support their culture but also communication in a language other than English, so that they can more easily maintain links with parents and family. Whilst the narrow legal decisions about the threshold and need for an order apply universally, welfare decisions may be more complex for children because of their ethnicity and family links. For local authorities, working with children and families from many different communities creates challenges beyond the everyday difficulties of engaging parents and finding suitable placements for children (e.g. Chand and Thoburn 2005; Bywaters et al 2017a).

## 5.5 Family difficulties and parenting problems

Research on the impact of harm (Cleaver et al 2007) and analysis of Serious Case Reviews (SCRs) (Brandon et al 2012) have identified three parental behaviours, mental illness, substance misuse and domestic violence, which are damaging to children and frequently occur together, and labelled them the 'toxic trio'. Specifically, Brandon et al (2012) found that in 20 per cent of a sample of 184 SCRs all three factors together created a toxic context in which a child was harmed or killed. The term has been criticised, for example by Featherstone et al (2018) who question its use when it is not clear that all three factors co-exist. They and others suggest it operates as a heuristic in decision-making and 'conflates very diverse phenomena and fails to engage with the subjective meanings attached to such behaviours as well as the evidence on their social determinants' (Featherstone et al 2018, p. 11). The point has been taken by Brandon and her colleagues, and in the 2016 Triennial Review they comment:

Both in this triennial review and in previous biennial reviews, it has become clear that these three issues of domestic abuse, parental mental ill-health, and alcohol or substance misuse are not the only parental risk factors that may contribute to cumulative risk of harm. Other parental risk factors often co-existed with these factors, and potentially interacted with them to create harmful environments for the children. These included issues such as adverse experiences in the parents' own childhoods; a history of criminality, particularly violent crime; a pattern of multiple consecutive partners; and acrimonious separation. (Sidebotham et al 2016, p75-76).

The co-occurrence of these factors in the context of care proceedings with other aspects of parents' lives has been examined by Broadhurst et al in their study of vulnerable birth mothers who repeatedly experience care proceedings (Broadhurst et al 2017a). Through file analysis and interviews with vulnerable mothers they identified that the mothers in their study did not all experience the same issues in the same combinations. They identified nine factors (including service non-engagement, housing instability, impaired cognitive functioning and lack of a support network) which occurred in at least 10 per cent of first applications and repeats and used latent class analysis to identify distinct combinations of factors. This identified five distinct groups of mothers: Group 1 which comprised 28.7% of the sample and included very high rates (above 75%) of the domestic violence, substance abuse and mental health concerns along with service non-engagement at both first application and repeat. None of the other groups had such high rates of all three of the 'toxic trio' factors but Group 4 (14.1%) had high rates of non-engagement, substance abuse and domestic violence but much lower rates of mental ill-health. All the mothers in Group 5 (13.3%) were substance misusers but had much lower rates of all other difficulties, including service non-engagement and domestic violence. Group 2 (26.9%) had moderate rates of most factors but very low rates for substance abuse. For Group 3, the main issue was cognitive functioning (17%). Examining all five groups, the researchers noted that, except for Group 5, the presenting problems persisted between the first and subsequent care proceedings. This was unsurprising given that non-engagement in services, which might have helped resolve difficulties, also persisted.

The relevance of each of domestic violence, drug misuse, alcohol misuse and mental ill health in the household in which the child is raised is highlighted by research on adverse childhood experiences (ACEs), a list of factors which also includes (separately) verbal, physical and sexual abuse and parental separation and imprisonment. Researchers have linked the number of such factors experienced in childhood with poor physical and mental health in adulthood and also with harmful behaviours such as drug taking, high risk drinking, violence (as a victim or a perpetrator) and teenage pregnancy, with higher numbers of ACEs being reflected in higher risks of the negative behaviours as an adult (Public Health Wales 2016). Critics such as White et al (2019) argue that ACEs are a ‘chaotic’ concept, poorly defined, pseudo-scientific, not attuned to the family’s wider socio-economic circumstances and liable to overly-deterministic interpretations. However, advocates of the concept do not argue that the response should simply be to remove children who experience any or a number of ACEs, rather to consider the benefits of prevention and sensitive intervention. A recent example is a study which shows the impact of sensitive parenting on adopted children with ACEs (Anthony et al 2019).

### *Concerns about mothers’ and fathers’ lives and parenting*

This study considered the presence or absence of local authority concerns about 28 negative circumstances and behaviours in mothers’ and fathers’ lives and 21 positive or protective factors and calculated a ‘concerns score’ for the mothers and fathers in each sample, based on the total number of concerns and the number of parents about whom information was provided in the local authority’s application. The data indicates the variety of negative and positive issues in different parents’ lives but not their seriousness nor their significance for the child’s care. The researchers had previously identified different patterns and numbers of concerns about parents in care proceedings for mothers with different demographics and fathers living with or separated from their children. For example, the small group of South Asian mothers in the *Care Profiling Study* (Masson et al 2008: 80) had comparatively few problems (~ 5 compared with ~ 7.3 for all mothers) but a much higher proportion of them than other groups of mothers had learning difficulties. The ‘concerns score’ not only reflects the numbers of different problems impacting on parents’ lives and the child’s care but also the extent of the social workers’ knowledge about the parent. Fathers who were not involved with their children had the lowest overall scores (~ 1.6), indicating how little was known about them at the time of the care application (p.81).

Table 5.1 below presents the concerns local social workers had about mothers and fathers in the two samples. It summarises the local authority’s concerns about the mothers’ and fathers’ behaviour and care as set out in the documents provided to the court. As can be seen from the overall numbers, social workers had some concerns about almost all the mothers – the few not included were deceased. The picture is very different for the fathers; there is information from only two-thirds of the cases. It cannot be assumed that these ‘missing fathers’ were all entirely absent or that they had no influence on their children’s lives. They were simply absent from the data, that is from the accounts presented in the care application, reflecting the engagement between the mother, father and social workers (Brandon et al 2017).

**Table 5.1: Local authority's concerns about mothers and fathers**

	<b>Mother's problems</b>		<b>Father's problems</b>	
<b>% is per centage of the sample</b>	<b>S1</b>	<b>S2</b>	<b>S1</b>	<b>S2</b>
MHP mental illness	45.5%	54.0%	19.8%	20.9%
refusal to accept support for MHP	15.0%	28.3%	4.5%	13.4%
Drug Abuse	36.5%	44.4%	34.2%	44.8%
refusal to accept support for drug	9.0%	16.2%	12.6%	23.9%
inability to use drug support consistently	13.2%	23.7%	8.1%	17.9%
Alcohol abuse	34.1%	32.8%	32.4%	27.6%
refusal to accept support for alcohol	9.0%	13.6%	13.5%	13.4%
inability to use alcohol support consistently	9.0%	17.2%	1.8%	11.2%
Crime	22.2%	26.3%	33.3%	40.3%
Sched 1 offender	1.2%	4.0%	4.5%	6.7%
Inappropriate visitors to home	31.1%	32.8%	6.3%	11.2%
inability/failure to protect from partner	28.7%	17.7%	6.3%	6.0%
sex abuse/failure to protect from sex abuse	16.2%	8.1%	14.4%	11.2%
lack of co-op with Children's Services	60.5%	69.7%	35.1%	55.2%
lack of co-op re child's health	46.1%	56.1%	20.7%	26.9%
Accommodation problems	35.3%	42.4%	21.6%	24.6%
Neglect lack of hygiene/ repeat accidents	66.5%	66.2%	40.5%	35.8%
Inconsistent parenting/emotional abuse	50.3%	70.7%	21.6%	40.3%
Physical abuse/ over chastisement	19.8%	18.2%	19.8%	17.9%
one-off physical assault	12.6%	4.0%	11.7%	3.0%
Problems re school/ attendance	29.3%	32.8%	12.6%	11.9%
inability to cope with/control child	21.6%	33.8%	16.2%	8.2%
learning difficulties	19.8%	23.7%	11.7%	8.2%
physical disability	3.6%	2.0%	1.8%	1.5%
sensory disability	1.8%	1.0%	1.8%	0.0%
health diffs, incl. overfeeding	10.8%	10.6%	6.3%	6.0%
DV	62.3%	64.1%	64.9%	64.2%
Refusal/failure/inability to use support for DV	11.4%	44.4%	8.1%	45.5%
violence outside home	14.4%	21.7%	25.2%	29.9%
chaotic lifestyle	40.1%	65.7%	25.2%	34.3%
Frequent changes of carer	8.4%	18.2%	3.6%	5.2%
care history	33.5%	17.2%	15.3%	6.7%
Harassment	9.0%	7.6%	3.6%	3.7%
<b>average number of problems</b>	<b>8.28</b>	<b>9.89</b>	<b>5.6</b>	<b>6.8</b>
<b>N</b>	167	198	111	134

The percentages in Table 5.1 relate to the percentage of mothers and fathers in the sample for whom social workers had each concern. The means for both mothers and fathers are higher for S2, challenging the suggestion (McFarlane 2019) that the increase in the number

of care proceedings is a result of a reduction in the threshold for proceedings. On average there were 1.6 more concerns about the mothers and 1.2 concerns about fathers in S2.

**Table 5.2: 5 top ranking concerns about mothers' parenting in each sample**

a) Ranked by S1

**Mothers' parenting: 5 most frequent concerns S1**

% is per centage of the sample	<b>S1</b>	<b>S2</b>
Neglect lack of hygiene/ repeat accidents	66.5%	66.2%
DV	62.3%	64.1%
lack of co-op with Children's Services	60.5%	69.7%
Inconsistent parenting/emotional abuse	50.3%	70.7%
lack of co-op re child's health	46.1%	56.1%

b) Ranked by S2

**Mothers' parenting: 5 most frequent concerns S2**

% is per centage of the sample	<b>S1</b>	<b>S2</b>
Inconsistent parenting/emotional abuse	50.3%	70.7%
lack of co-op with Children's Services	60.5%	69.7%
Neglect lack of hygiene/ repeat accidents	66.5%	66.2%
chaotic lifestyle	40.1%	65.7%
DV	62.3%	64.1%

Table 5.2, above, orders the top 5 concerns about mothers for a) S1 and b) S2. Table 5.3, below, provides this information for fathers. These indicate some change in the issues of concern to the local authorities as well as the overall increase in specific concerns in S2.



**Table 5.3: 5 top ranking concerns about fathers' parenting in each sample**

a) Ranked by S1

**Fathers' parenting: 5 most frequent concerns S1**

% is per centage of the sample	<b>S1</b>	<b>S2</b>
DV	64.9%	64.2%
Neglect lack of hygiene/ repeat accidents	40.5%	35.8%
lack of co-op with CS	35.1%	55.2%
Drug Abuse	34.2%	44.8%
Crime	33.3%	40.3%

b) Ranked by S2

**Fathers' parenting: 5 most frequent concerns S2**

% is per centage of the sample	<b>S1</b>	<b>S2</b>
DV	64.9%	64.2%
lack of co-op with CS	35.1%	55.2%
Refusal/failure/inability to use support for DV	8.1%	45.5%
Drug Abuse	34.2%	44.8%
Crime	33.3%	40.3%

Four matters feature in both lists relating to mothers' parenting: neglect, domestic violence (DV), lack of co-operation with Children's Services and inconsistent parenting/ emotional abuse, which were each identified in over half the cases in S1 and almost two-thirds of the cases in S2. Two of these items – DV and lack of co-operation with Children's Services were also in the top 5 list relating to fathers. The lower rate for non-co-operation compared with mothers may indicate lower expectations of co-operation from fathers, reflect the arrangements for meetings and appointments or an acceptance of father absence (Brandon et al 2017).

Lack of co-operation with Children's Services is not new; it has been identified as a major factor in resort to compulsory intervention in previous studies of care proceedings (Brophy 2006; Masson et al 2008; Broadhurst et al 2017a). However, it serves to emphasise that if children are to be protected and the number of care proceedings reduced, local authorities need to find better ways to engage resistant parents. Also, the pre-proceedings process can result in a greater focus on non-co-operation where 'written agreements' or 'statements of expectations' are imposed rather than negotiated and, through their breach, become ways to evidence parental non-co-operation and other failings.

In S2 there was a much higher rate of failure to use support for domestic violence by mothers (44% compared with 11%) and by fathers (45% compared with 8%); this may reflect the increased availability of courses such as The Freedom Programme for women, and the expectation that mothers experiencing domestic violence attend them. The high proportion of domestic violence as a concern reflects not only its prevalence and the recognition of its adverse impact on children but also the responsibility placed on mothers to manage this in

the face of inadequate responses to perpetrators from the justice system (Humphreys and Thiara 2003; Burton 2008). However, fathers in S2 were also apparently being expected to engage in services to address their violence.

Fathers' drug abuse and criminal behaviour both featured in the top 5 list. The percentage of fathers whose drug use was of concern was not higher than mothers, rather there was a lack of reference to many other aspects of fathers' lives. A higher proportion of fathers than mothers were involved in crime (see table 5.1), this impacted on children's lives through fines and imprisonment, and the risks of violence it brought to the home.

### *Positive parenting behaviour*

The researchers also scored the applications against a list of 18 positive behaviours for mothers and fathers. Positive behaviours were recorded for over half the mothers (S1 94, 56%, S2 119, 60%) reflecting both the recognition that the courts expect balanced evidence, not just a list of concerns and the fact that many of the mothers were making a positive contribution to the lives of their children who were suffering, or at risk of significant harm. Recognising this underlines the difficult task local authorities and the courts face in deciding how to respond. Table 5.4 lists the top 5 positives relating to mothers mentioned in social work statements for each sample.

**Table 5.4: Top 5 positives relating to mothers in each sample**

#### a) Ranked by S1

% of sample	S1	S2
Emotional warmth	57.4%	37.0%
Extended family support	44.7%	63.9%
Good basic care/encouraging skills	38.3%	26.9%
Co-op over health needs	37.2%	31.9%
General co-op with CS	36.2%	42.0%

#### b) Ranked by S2

Extended family support	44.7%	63.9%
General co-op with CS	36.2%	42.0%
Emotional warmth	57.4%	37.0%
Co-op over health needs	37.2%	31.9%
Good basic care/encouraging skills	38.3%	26.9%

Information about positive aspects of fathers' parenting were available for less than 30% of the fathers in S1 and S2. Indeed only 15 fathers in S1 and 16 in S2 were said to provide good care. Extended family support was the most commonly referred to positive, being noted for half of fathers for whom positive information was given.

## **5.6 Children's services' involvement prior to the proceedings**

Almost all the families were known to children's services prior to any consideration of care proceedings. Many had been known to children's services for a long time: for half the

sample more than 5 years, including for some parents during their childhood; and for another quarter between 2 and 5 years. There was no difference between the samples in the proportions of families with a substantial history of involvement with children's services. Where families had been unknown, children's services became involved - following the birth of children addicted to drugs, whose mothers had had no maternity care; the murder of the mother by the father; disclosure of sexual abuse by the father; when a s.7 report was ordered in private law proceedings; and in response to injuries to children thought not to be accidental.

### *Previous care proceedings*

Care proceedings applications record previous court applications involving the children. Using this information, previous care proceedings were identified for 46 children from 23 families (including 2 in Wales) for whom there had been one previous s.31 application and 7 children from 4 families (3 from S2) with two applications before the Study case. The cases below, one from each sample, are both examples with two previous s.31 applications. The majority of such cases resulted from removal of children from their parents, see Figure 10.9, below. The examples here are of further proceedings after the failure of a SO and the breakdown of a placement with kin, the child's special guardian.

#### **S1: Oliver and Archie 4321**

The original care proceedings resulted in COs for these white British boys but had been discharged during the previous year. The second set of care proceedings resulted in SOs against the wishes of the children's guardian. Difficulties continued, the pre-proceedings process was started, and the mother agreed to the children going into the temporary care of relatives whilst she underwent an extensive rehabilitation programme for her alcohol problems. When it became clear that the children would need long-term care which the family could not offer, the Study care proceedings were brought.

#### **S2: Charmayne 2641**

The original decision of CO+PO was appealed by the father of this white British girl whose identity had not been disclosed by the mother. The second proceedings ended with an SGO to a paternal relative, but this broke down resulting in the proceedings in the study.

Increases in reapplications result from changes in both court and local authority practice: the combination of more orders, which do not achieve effective protection for children and local authorities responding to this by making further care applications. S2 contained a higher proportion of cases which had previously been subject to care proceedings, 9.6% compared with 6% for S1, indicating that the Study LAs were needing to reapply and reapplying more frequently in 2014/15 than in 2009/10.

The proportion of reapplications in the sample does not indicate the reapplication rate. Some children could not have been subject to proceedings before the Study case because of their young age; none of the children whose sample case was a second or subsequent application was under the age of 1 year. Excluding all children under 1 year from the analysis left 385 children in the England sample, of whom 8.4% in S1 and 13.8% in S2 (overall 11.2%) had been subject to care proceedings previously. These figures are substantially greater than those identified by Broadhurst et al (2017a) who found that 5.5% of cases in 2016 in the Cafcass database involved a child subject to care proceedings more than once in 5 years. The risk period for care proceedings is substantially longer than this – half of children with care proceedings are under the age of 5 years – they could be subject to a further application for at least 10 more years.

#### *Social work involvement before the Study application*

The period of active social work before considering proceedings was only three months in one fifth of cases and the move to considering proceedings was shorter for S2 cases than for S1 cases. There was active social work with the family for a year or less in 65% of the S2 families but more than a year for 46% of the S1 families ( $p=0.034$ ). Avoiding delay before proceedings is not simply a response to the PLO but reflects wider concerns about drift and delay in social work, and the pressure to progress or close cases (e.g. Biehal et al 2010; Brown and Ward 2012; Bywaters et al 2018).

There were current child protection plans for almost two-thirds of the families (65.4%) with almost no difference between the samples. There had previously been child protection plans for another 10%; overall, only a quarter of families had not been subject to a child protection plan, with this being the case for only 20% of families in S2. Children over the age of 10 years at application were least likely to have ever had a child protection plan; 37% had never been subject to a plan and only 46% had a current one. Conversely those aged 5-9 years were most likely to be on a protection plan, only 17% had never been subject to one.

Children's services involvement included previous care proceedings (discussed above) and accommodating children in foster care or arranging for them to be placed with relatives, sometimes in the hope of averting the need for care proceedings or to protect children while proceedings were being planned. Accommodation was part of the protective action for children and families in 28.2% of S1 cases and 36% of S2 families. There were 106 (38.5%) S1 children and 139 (43.3%) S2 children known to be looked after at the date of the care proceedings application, but many of these only became looked after immediately before the proceedings. Overall, 80 (13.4%) children became looked after at this time and another 29 (4.9%) had become looked after in the previous two weeks, with very little difference between the samples, see figure 8.1 (Chapter 8) below. There were 31 children who were accommodated for more than six months, including 8 from S1 accommodated for more than 1 year, before proceedings were brought. These very long delays marked clear drift but there were cases with delays up to a year where children were safe and there were good reasons such as parental illness for delaying proceedings so that parents could participate.

Previous research has noted that care proceedings are frequently brought in response to a crisis; cases are ‘catapulted’ into proceedings after an incident, the last in a series and often preceded by more serious events (Hunt et al 1999; Dickens 2007). The proportion of proceedings started in such circumstances in S2 was half that in S1 (S1 27.1%; S2 12.3%), and both were much lower than the 42% found in 2004 cases (Masson et al 2008). Other ‘routes to court’ (Hunt et al 1999) were very similar between the two samples with the exception of ‘a mixture of (in home) services and accommodation’ which accounted for 11% of S2 but under 1% of S1. One conclusion from these changes is that the introduction of the Pre-proceedings system and the PLO have combined to encourage a more planned use of care proceedings. How this impacts on the care of children during proceedings and the orders made in them is considered in Chapters 8 and 9.

## 5.7 Conclusion

There were only minor differences between the children and families in S1 and S2 and the social work involvement with them before care proceedings were brought. There were signs that cases in S2 which progressed to court did so more quickly but it was also clear that proceedings were planned; the proportion of cases going to court in a crisis was lower but there was a higher use of s.20 accommodation in the immediate period before proceedings were issued.

This Chapter provides a partial answer to **RQ6** *To what extent do care proceedings under the new PLO result in different processes, plans, orders and outcomes after 12 months from those brought in 2009/10?* It has highlighted changes made by local authorities to accommodate the requirements of the PLO. All the local authorities in the Study had changed their processes for considering whether to bring proceedings so they could be clear that proceedings were needed, alternatives were not available (or had failed) and the application was thoroughly prepared.

## Summary

All the six local authorities had developed clear procedures, involving a local authority lawyer and a service manager, to make decisions about using care proceedings and ensure that alternatives had been thoroughly considered. Scrutiny of applications was closer in 2014 than it had been in 2010 but the focus remained on the needs of the child.

There was little difference between the children and families subject to proceedings in S1 and in S2 although there were some differences, for example in the mean age of the children between the samples for some local authorities. Overall, more than half the children subject to proceedings were aged under 5 years. The majority of the cases (63%) concerned only one child but only 29% of the children were ‘only children’; most had siblings who were either subject to proceedings with them or were already separated from the parents. Over 70% of the families were white British and over 20% had mixed ethnicity. Children’s care was undermined by many problems in their parents’ lives with nearly two-thirds of mothers experiencing domestic abuse and a similar proportion of both mothers

and fathers viewed as not co-operating with children's services to improve their care. Despite their difficulties more than half the mothers in S1 and more than a third in S2 demonstrated emotional warmth and around half had some support from their extended family.

Almost all families were known to children's services before there was any consideration of care proceedings. Nearly two thirds of children had current child protection plans and 8% of the whole sample had previously been subject to care proceedings. The period of active social work before proceedings was shorter for S2 reflecting the increased concern with avoiding drift. Protection and support through s.20 accommodation was common before proceedings were issued. There was evidence of more planning of care proceedings and less use as a crisis response in S2 than in S1.

## **Chapter 6 Diversion and the pre-proceedings process**

### **6.1 Introduction**

This chapter updates the findings on diversion from court for children who were included in the earlier study of the pre-proceedings process, but who had not become subject to proceedings by the end of the follow-up period in that study (cases starting in 2009-10, followed up for at least 18 months after the date of the pre-proceedings letter (Masson et al 2013). To do so it uses the DfE administrative datasets for CLA and CiN, and the Cafcass databases, CMS and e-CMS (searched in December 2017). There are limitations to this update: DfE data was only available for England and up to 31 March 2016; it was not available for unmatched cases (7 children) and did not include the pre-proceedings only cases from Wales (5 families). This means the sample is small, 29 families including 48 matched children. Nevertheless, the present study gave us the opportunity to see what had happened to these diverted cases in the longer term, particularly what happened to them in terms of local authority involvement and any subsequent court action (public or private law).

As discussed in Chapter 5, the pre-proceedings process has two aims – one, to divert cases from court if possible, and secondly to shorten the length of any subsequent care proceedings by ensuring that all alternatives had been explored, necessary assessments had been undertaken prior to the proceedings, and the local authority's case was well-prepared (Masson et al 2013: 151). It was introduced in 2008, and the key stages are the sending of a letter to the parent(s), advising them that the local authority is considering starting care proceedings and inviting them to a meeting accompanied by a lawyer, to discuss what they could do to prevent this. At the meeting the local authority would explain what assessments it intended to undertake in the pre-proceedings stage, and any requirements on the parents. It was common for this to be recorded in a written agreement or statement of expectations. In some cases, the letter was used to notify the family that the authority had already decided to start proceedings; in these circumstances, the meeting was a way of explaining the decision and discussing arrangements for the children's care during the proceedings what the parents might be able to do to affect the outcome.

Our original study found that the pre-proceedings process did not reduce the duration of subsequent proceedings, and was often ignored in the courts; indeed, it added to overall delay, with cases that went into the process taking, on average, ten weeks longer from the legal planning meeting to the final order than those that did not. However, the study found that the process could divert a substantial proportion of cases. There was a diversion rate of 27% across the six authorities in our sample, although there was notable variation between them (Masson et al 2013: 153). We found a higher diversion rate in the small sample of cases we observed, when the pre-proceedings process was more established. It was not possible to follow up these cases because our agreement for accessing these meetings did not involve collecting data which would enable cases to be tracked.

## 6.2 Diversion

Cases can be diverted in a number of ways; through improvements in parental care, or through agreements for kinship care (possibly involving private law proceedings), or s. 20 accommodation. Another way in which cases might not go to court, at least in the local authority that instituted the pre-proceedings process, is if the family leaves the area. The diversion rate necessarily depends on the cases brought into the system; all cases had to meet the threshold for proceedings, but this is subject to different interpretations, and there are many cases which meet the threshold, but proceedings are not brought, and many different reasons for this. A decision not to bring proceedings can be made because the orders the court is likely to make are not expected to improve the child's circumstances, or at least no more than continuing to work without a court order. Bringing more families into pre-proceedings without taking more cases to court may be seen as demonstrating the effectiveness of the process but may merely amount to net-widening, where the existence of a route away from proceedings encourages its use, a point discussed in the earlier study (Masson et al 2013: 79).

In our original study, we followed the children for at least 18 months after the pre-proceedings letter, to see whether or not they entered care proceedings. There were 34 cases that entered the pre-proceedings process but had not gone into care proceedings at the end of the study, from a total of 120 cases where the process was started, excluding cases where the pre-proceedings letter was a letter of intent (i.e. there was no possibility of diversion). However, the 34 was the full number of 'pre-proceedings only' cases, whilst the 120 was a sample of all the cases that entered proceedings in the six authorities, so we had to adjust for this. Taking account of the sampling strategy gave an estimated number of 127 cases where the pre-proceedings process was started (excluding letters of intent). This makes the diversion rate 34/127, i.e. 27%. The diversion rates in the six local authorities ranged from 12.5% to 33%, with the lowest rate in the authority that made least use of the process.

Diversion was achieved at the time through alternative care arrangements in ten of the 34 cases: three children moved into foster care with strangers under s.20, and the remaining seven were cared for by parents or grandparents, including three where fathers obtained residence orders and took over sole care. In 16 cases there were improvements in care or engagement with services and in six of these the improvements were substantial. In four cases the family moved out of the area, so although they were 'diverted' as far as the local authority was concerned, we did not know whether they had entered proceedings elsewhere. Other factors, such as the difficulty of establishing threshold on the basis of past concerns and evidential problems also contributed to the decision not to bring proceedings. In four cases the local authority legal file had insufficient information to establish how the case had been diverted.

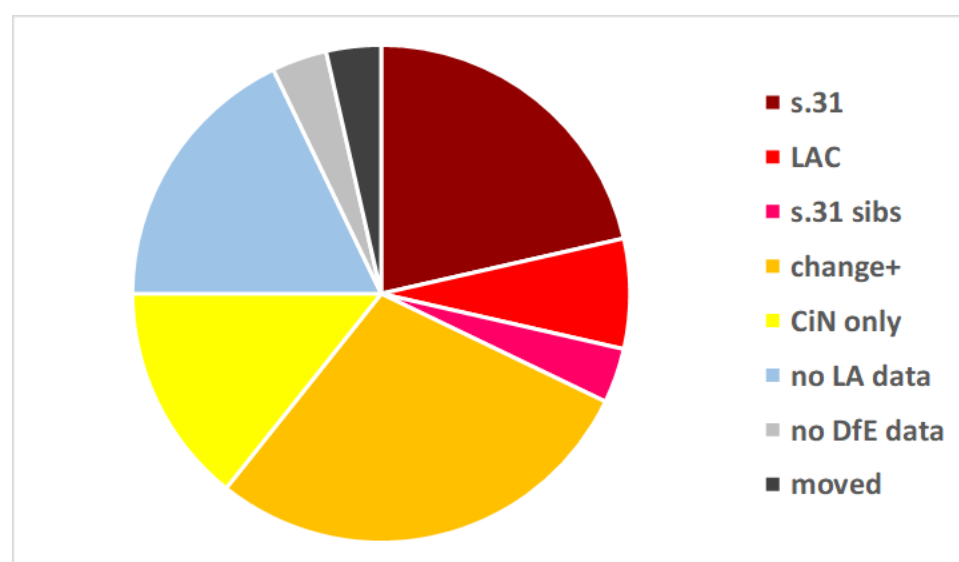
Relying on the DfE database meant we were not able to track the cases from the Welsh authority, although we did identify one case where two children subsequently went into care proceedings (6182-3), discussed below. If we exclude the Welsh cases from the



calculations above, the number of pre-proceedings only cases changes to 29 out of 107, but this is the same proportion, 27%.

Our tracking found that by 2016, seven further cases involving 13 children in the English authorities had entered care proceedings, reducing the diversion rate to 22 out of 107, or 20.5%. As well as the children who went into care proceedings, there were two cases where the children subsequently went into s.20, eight where there was a change of family carer, and four where the children were 'children in need' six years after the letter before proceedings (N.B. this is 'children in need' only, excluding the cases where the child had previously been looked after). Additionally, there was one case where the siblings of children who had been but were no longer looked after became subject to care proceedings. There were five cases where the local authority was not able to identify the case, one that we could not match to the DfE data, and one where the family moved away. The findings are shown in the pie chart below (figure 6.1).

**Figure 6.1: Outcomes after 6 years for the 29 'pre-proceedings only' cases from the English LAs**



### 6.3 Case examples

It is not possible to identify factors that could accurately predict whether a case would subsequently go into care proceedings. Substance abuse appears to be a critical factor, because six of the seven cases which resulted in subsequent care proceedings were known to involve this, and relapse is recognised as a common issue (noted in the FDAC follow up study, Harwin et al 2016). However, there were cases with drug or alcohol misuse which did not go into care proceedings. An example of this is a case where the mother had a history of alcohol misuse, being subject to domestic violence, and neglecting her children (5051). Two previous children had been adopted. She was now expecting a third child, and there was a pre-proceedings meeting before the child was born. The mother stopped drinking during the pregnancy, and was much more engaged with services, motivated to keep her child. Ten

months after the child's birth, the child protection plan was stepped down to 'child in need', and she kept her child.

An example of a less positive outcome is a case involving brothers aged 16 months and 2 months at the time of the original letter before proceedings, where the concerns were mainly about the impact of the mother's drug use. The assessment was she would be able to care for her children if this could be controlled (2321-2). Within the pre-proceedings process she was able to stop using and the boys, who had been living with her parents, moved back to her. More than two years later, care proceedings were started, which ended with care and placement orders. It was not possible to find adopters for the older child, but the younger one was eventually placed for adoption.

Another case involved a boy who had been a year old at the time of the initial pre-proceedings meeting (2331). His mother was aged 17 and in care, with mental health problems and problems of drug use, in a violent relationship with the boy's father. There were concerns about child neglect, but whilst the case was still in the pre-proceedings stage, the boy was admitted to hospital with suspected non-accidental injuries. The enquiries were inconclusive, but his mother dropped out of the assessments. He went to live with his father, and eventually a residence order was made. Four years later, care proceedings were started after he was injured by his father.

A further example shows worrying delay for two siblings, aged 4 and 2 when the pre-proceedings process was started (6182-3). The concerns were around the parents' drug and alcohol misuse, domestic violence, chaotic lifestyle and non-engagement with services over many years. At the first pre-proceedings meeting there was a written agreement for the father to move out, but nine months later a family group conference agreed that the children would live with him. There was no court order, but the children remained on a 'children in need' plan. The case was closed 18 months after the first meeting. Care proceedings were brought 18 months after that, which then lasted three years, and ended with care and placement orders for both children. Both children were still in care on the last date for which we had CLA data, 31 March 2016, now aged 10 and 8, and so unlikely ever to be placed for adoption.

A case might be diverted from care proceedings in the pre-proceedings stage if the family moved away. There were cases where the family moved to other areas in the UK or returned to their home countries. In one case, the social work team manager expressed 'huge relief' when she heard that a neighbouring authority intended to take proceedings (5201-2); the care proceedings were found in the Cafcass database. In another, the family moved abroad but later returned to the UK, and care proceedings were taken by a new local authority, two years after the original pre-proceedings process (1371-3).

There might be care proceedings on other children in the family. An example is case 1362, involving two boys who had gone to live with their birth father during the pre-proceedings stage, under a residence order. They remained there, apparently doing well, but there were s.31 care proceedings on two younger siblings, which ended in care and placement orders.

There were eight cases where the child/children subsequently moved to a new family carer, without the use of care proceedings or s.20 accommodation. An example is case 4031, a girl who was almost two years old at the time of the original letter before proceedings. This was a case involving a young mother who was a heavy drug user. Here, the pre-proceedings process did not seem to help bring about change and the mother was not following the agreement with the local authority; however, somewhat unexpectedly, the social worker told the legal department that they would end the pre-proceedings process and rely on the child protection plan. Within a year the girl became the subject of a special guardianship order to her aunt.

There were six cases where there were subsequent private law proceedings. The case above (4031) is one example, which avoided care proceedings but did not prevent a change of carer or court involvement. There were examples of protracted private law proceedings. An example is a case involving three children whose mother had mental health problems and assaulted one of them (4221). The local authority supported the father under the pre-proceedings process to apply for residence orders. These were made, but there were repeated private law proceedings for residence and contact over the next four years.

There were also cases where the child/ren remained living long-term with the carer to whom they moved during the pre-proceedings stage, without the case ever coming to court. An example is case 1341, an adoption disruption involving an 11 year old boy. This was diverted from proceedings because his adoptive parents agreed to s.20 accommodation. He remained in care, and by 2015 he was in an independent living placement.

In recounting these examples, it is not our intention to imply that the pre-proceedings process 'doesn't work'. We have described one successful case (5051), and as noted, even over the longer-term the rate of diversion from care proceedings was approximately 20%, one in five. Another positive example is case 1311-2, two children aged 8 and 3 living in a very chaotic household, suffering neglect and emotional harm, and the parents struggling to cope with challenging behaviour from the older boy. By the end of the pre-proceedings process he was described as a 'different child' and the process was closed with the comment on file: *'All has been achieved, PLO has served its purpose.'* The case was stepped down from child protection to 'children in need'.

## **6.4 Conclusion**

Whether or not the pre-proceedings process is considered a success is very much a question of whether the glass is seen as half-empty or half-full. Diverting about a fifth of the cases that were on the edge of care proceedings could be seen as a great success; on the other hand, over time 80% were not diverted, and in some of the cases the delay was considerable and likely to have damaged the chances of the child ever having a secure, permanent home. Furthermore, as we noted in our report on the pre-proceedings study, most of the families that are diverted need continuing support.

Diversion will save the local authority some costs (legal fees, social workers' time on court reports and so on), but most diverted cases will need to remain open, at least initially, on

child protection or child in need plans; and as we have seen, a significant number will have further legal proceedings or changes of carer. This picture of on-going instability and need, and the likelihood of future court proceedings, under public or private law, is an important message. It chimes with one of the major findings from this study about the outcomes of cases which *did* go into care proceedings, discussed in Chapters 10, 11 and 12, namely the fragility of many of the cases which end with the children at home under supervision orders.

### **Summary**

The study found that seven of 29 'pre-proceedings only' cases in England from the earlier study had subsequently gone into care proceedings, reducing the diversion rate to just over 20%; but as well as that, a significant number of children remained 'children in need' and more than a quarter had experienced changes of carer without going through care proceedings (i.e. to kinship carers, s.20 foster care or their other parent). These changes involved private law proceedings for some children and long-term s.20 accommodation for others.

The follow-up shows that whilst care proceedings can be avoided, alternative care and support over the longer-term are often necessary.

## PART 3: COURT PROCESS, CARE DURING PROCEEDINGS AND DECISIONS

### Chapter 7: Court proceedings

#### 7.1 Introduction

Chapter 2.2 outlined the reforms to care proceedings introduced by the Children and Families Act 2014, the amendments to the Family Procedure Rules, the PLO Practice Direction (PD12A), and Chapter 4.3 discussed socio-legal perspectives on the interactions between court practice and case outcomes, and how these may have been impacted by the PLO, (see especially Box4a).

This chapter uses the court data to compare the legal process for the two samples (S1 before and S2 after the reforms) in relation to: the type of court where the case was heard; the length of time the proceedings took and the factors which impacted on this. In addition, it outlines the findings in relation to the use of experts in care proceedings after the reform, S2 (details of expert appointments were not collected for S1), and the operation of the PLO 2014. Throughout, the chapter draws on material from the interviews and focus groups for local authority and judicial reflections on the operation of the reforms and their impact.

Figure 7.1 outlines the differences in care proceedings process before and after the reforms. Key differences for S2 include:

**Front-loading** – the expectation that wherever possible the local authority would have completed all necessary assessments and identified its care plan before applying to court, (PD12A).

**Allocation process** – applications are made to the Family Court. The local ‘gatekeeping’ or ‘allocations group’ comprised of judge(s) and a magistrates’ legal adviser consider the local authority’s allocation proposal and allocate the case to the appropriate tier of judge (President of the Family Division 2013a). Previously, most care applications had to be started in the family proceedings court and were transferred to the county court at first hearing, or subsequently, if the magistrates considered this necessary.

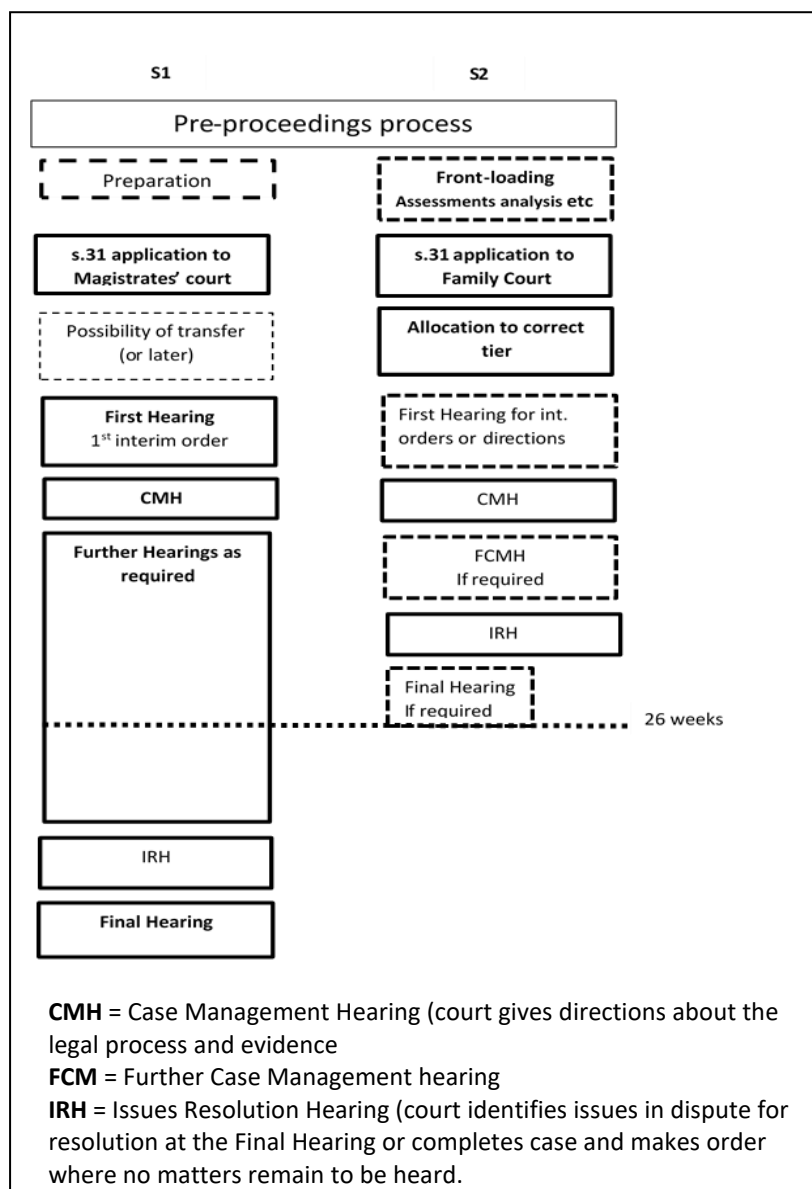
**Interim orders** – can last for the duration of the proceedings and do not need to be renewed by the court after 8 weeks and then every 4 weeks. Before the reforms, renewal, if agreed by all parties, was an administrative process which did not require a hearing.

**Expert appointments** – restrictions on the appointment of experts in proceedings to what is ‘necessary’ to assist the court ‘to resolve the case justly’ (CFA 2014, s.13(6)). Strict procedures requiring parties seeking the appointment of experts to identify the questions to be asked, potential experts able to complete the assessment within the court’s timetable and to provide this to the court with the experts’ CVs (FPR 2010, Pt 25).

**Issues Resolution Hearing** – used to narrow the issues and identify aspects of the case where oral evidence will be heard. Where possible, the IRH can be ‘an early final hearing’ to make final orders (PD 12A, Stage 3).

A time limit of **26 weeks** for the care proceedings process (CFA 2014, s. 14, PD12A, para 5).

**Figure 7.1: Care proceedings processes for S1 and S2**



## 7.2 Proceedings before and after the introduction of the PLO

The changes to the care proceedings process, including the requirements on local authorities for better case preparation, and Cafcass' operating framework were all intended to support the goal of completing cases within 26 weeks. This section discusses how far these changes were implemented and resulted in cases being decided more quickly.

## Allocation

Before the creation of the Family Court and the new allocation guidance, almost all care proceedings had to be started in the family proceedings court. Despite the seriousness of the issues raised, the lowest court in the justice system, which was frequently presided over by lay magistrates, had full jurisdiction. Cases could be transferred to the county court, or even the High Court, because of complexity or if the final hearing would take more than three days, and many were. The proportion of cases transferred varied widely in different areas (Masson et al 2008). The Allocation Guidance (President of the Family Division 2013a) advised, 'Cases should be allocated to judges or magistrates and case managers with the appropriate level of experience to ensure that judicial resources are used most effectively.' (para 15).

In court areas where there were few magistrates experienced in care work, this guidance resulted in few cases being allocated to magistrates and levels of experience declining further. This was compounded by two other factors: a policy of using family magistrates primarily to hear private law children cases (Richardson 2019) and the reduction in the number of magistrates resulting from resignations and low recruitment (Gibbs 2014).

A lack of magistrates increased pressure on district and circuit judges who were already busy because of the increase in care cases. Conversely, where magistrates were available, they might be allocated cases more suitable for district judges. Judges in the Focus Groups noted how this undermined the principle of allocating cases according to their perceived complexity:

*'What we have found has happened is what my DFJ calls the "push-down" effect, so we've got DJs doing cases which on allocation ought to be done by CJs and we've got the magistrates doing cases that DJs should be doing, just in order to try and use the resources we've got.'* FG2 D

One local authority lawyer also noted an attempt to 'rebalance' allocation in favour of magistrates because of a shortage of judges locally.

The application form makes provision for the local authority to give a view on case allocation; most local authority interviewees favoured allocation to judges rather than magistrates, who were seen as 'inexperienced' (LA A) 'not having the same kind of grasp of the issues' and 'prolonging hearings' (LA B). Local authority lawyers generally found their recommendations accepted and agreed with the allocation decisions made:

*'I certainly think most of us are happy for it to be in front of a DJ, in front of a Judge rather than a magistrate. I think magistrates are still really hesitant in making decisions whereas Judges are much more confident.'* LA B SWM1.

A decline in the use of magistrates for care cases was reflected in the data. Whereas nearly three-fifths of S1 cases were heard by magistrates, and magistrates heard at least half the cases in each Area, in S2 magistrates heard only just over one-fifth of cases overall. The proportion of S2 cases heard by magistrates also varied substantially between areas, from

6.5% to 34.1%. The two areas with the lowest use of magistrates were in London; the closure of the Central London Family Proceedings Court in Wells Street had removed a well-respected resource which previously had heard large numbers of care proceedings.

### *Appointment of the children's guardian*

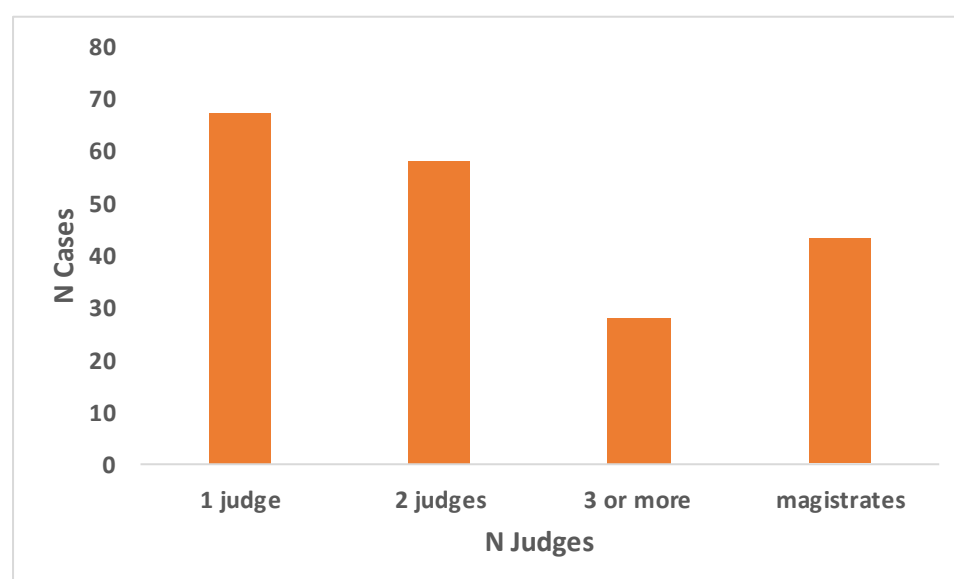
In 2009 and 2010, when S1 court applications were made, Cafcass was experiencing major problems allocating children's guardians, which meant that appointments were often made late in the proceedings, a great concern of the judiciary and care lawyers, resulting in major criticism of Cafcass (NAO 2010). Cafcass's approach to the PLO – prioritising the appointment of children's guardians and providing an initial analysis for the first hearing – largely eliminated such delays for S2 cases. There were short delays in making guardian appointments in 17 S2 cases, all but 1 from Areas B and C. Whereas guardians were appointed outside the target time of 3 days in less than half (48.2%) of S1 cases, this was the case for only 8.4% of S2 cases. The delays to S2 cases were also far shorter; on average, S1 delayed cases had been in proceedings for over 12 weeks before the guardian was appointed but S2 cases for less than a week. Consequently, in S2, the court had the benefit of the children's guardian's preliminary view about the issues and need for further evidence at the first hearing when interim orders were being considered and at the CMH.

## **7.3 Operating the PLO**

### *Judicial continuity*

Both the Family Justice Review (FJR 2011b, 2.119-132) and the Judiciary (Ryder 2012a: paras 26-31) favoured judicial continuity - the allocation of cases to a single judge from start to finish. In practice, arrangements were more flexible with some courts operating continuity as far as possible, others allocating cases to two judges and others continuing as before with cases heard by the judge available for the hearing.

**Figure 7.2: Sample 2 Judicial Continuity**





Taking S2 as a whole, judicial continuity was achieved in only one third of cases, and in less than half of those heard by judges. Cases were passed to different judges because of judicial availability/ listing difficulties, case complexity and the need for urgent or timely hearings. Over two-fifths of cases heard by judges were heard by two or more, with more than a quarter of these being heard by three or more judges, see figure 7.2.

Judicial continuity, or the lack of it, appeared to reflect listing practices; in three of the six areas no cases were heard by more than two judges. In these areas, between one fifth and one third of cases were heard by magistrates; in contrast the two areas with the lowest use of magistrates also had the lowest rates of judicial continuity. The lack of judicial continuity added to the pressure on judges and reduced their capacity to provide the judicial case management required to avoid delays. Judges in these areas had little time to read case papers, more rarely had knowledge of cases derived from previous hearings and could not expect to take further hearings. Not only did lack of judicial continuity lead to a waste of court time, it caused additional stress for judges:

*'I'm doing final hearing after final hearing after final hearing where I've had absolutely nothing to do with it beforehand. I've had no opportunity to do the case management that I would have done. And as for the comment that one didn't do that – look at where one was going from the beginning of proceedings before the PLO – I disagree fundamentally. ... My court has meant that I've been unable to do case management because a policy decision was taken that there would be case management judges because that's the only way of complying with the 26-week rule and there would be trial judges, ... so you always had the resource of trial ....before 26 weeks. ...I have no idea about the case I'm going to try. I'm a very experienced CJ and I don't go outside my timeframe or whatever, unless I absolutely have to ... but the pressure, the stress, and particularly if I have a responsibility to do a proper reasoned judgment and do what I think is right puts me under a lot of pressure – that's all. There aren't enough judges.'* FG1 D

For this judge, the arrangements had made things worse because they had previously managed their own cases. Another judge noted that the volume of cases allocated precluded continuity:

*'I'm case managing so many cases at the moment, simply because of lack of judges, that I can't try all the cases that I'm managing, and so those that I haven't settled – and I settle probably about 80% of them – ...are now heard by Records [part-time judges].'* FG1 A

Local authority interviewees, both lawyers and social worker managers wanted judicial continuity for their cases. Judicial continuity had made *'a big difference'* (LA E); lack of continuity was *'really unhelpful'* (LA D). They acknowledged that judicial continuity could cause delay because of a judge's availability but it could also save time because it encouraged all parties to trust in the judge and reach agreements rather than seeking hearings:

*'[J]udicial continuity with judges who are really engaged in the cases allocated to them, means that there are fewer, fewer hearings and issues can get resolved on the papers, just by drafting consent orders.'* LA B LAS1

Concerns were expressed about the effect on parents and the local authority of having a different judge at a crucial hearing:

*'Judicial continuity is quite a big issue and particularly when you have got complex cases, because you will have a different stance taken by one judge than the previous judge and that makes it difficult for the Local Authority when you feel a case is going one way and then suddenly it has changed again, so that is difficult.'* LA C LAS

*'It's not always the same judge and then that becomes really complicated because they've not been there at the beginning. You find they've not read the papers. Yes, it's not always consistent.'* LA F SWM4

And a lack of continuity could lead to poor decision-making and delay. For example, in case 3741, which was heard by magistrates and then 4 different district judges, both the children's guardian and the court said the case should not conclude until the local authority had secured housing for the mother. However, a month later, in the 25<sup>th</sup> week, a different district judge concluded the case with an (agreed) supervision order although the housing arrangements were still unclear.

The impact of judicial continuity on the duration of cases is discussed below.

#### *Assessments and the use of experts*

In addition to the controls on the appointment of experts, the PLO emphasised the importance of the local authority's preparation of applications, including by completing necessary assessments before bringing proceedings, a message re-iterated in the *Children Act Guidance, Volume 1* (DfE 2014d) and in the President of the Family Division's *View 1* (Munby 2013a). The President acknowledged the social work expertise of local authority social workers and children's guardians, and together Cafcass and the Association of Directors of Children's Services emphasised the importance of an analytical approach to presenting social work assessments and plans to the court (Cafcass and ADCS 2013). These messages had clearly been heard by local authorities, who welcomed the renewed emphasis on assessments by social workers rather than appointed experts and not repeating assessments that had already been done:

*'By the time we go to Court we actually want to be in Court having done all the assessment work we have done so that it will not have to be duplicated.'* LA A IRO1

Judges in the focus groups were positive about the restrictions on the appointment of experts. These made it easier for them to justify refusing applications and also meant there was greater reliance on assessments by social workers who know the family.

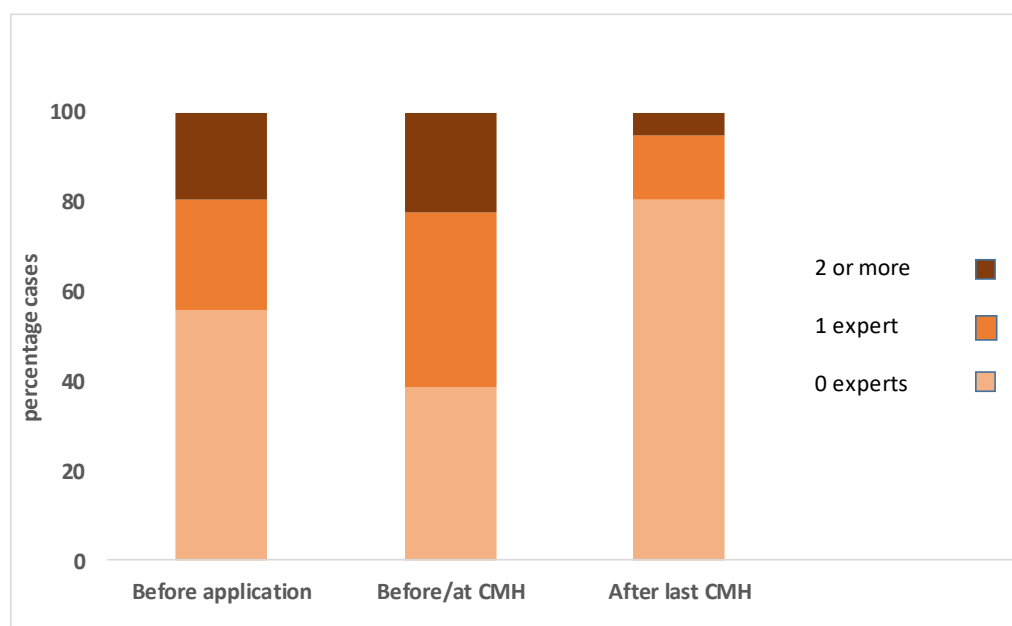
*'Part 25 applications have been very good news since they came in. I find that the "necessary" test does enable the judge actually to keep the case down to a proportionate level.'* FG2 F

*'I think it's been good in two ways: one, we have less [experts] but I actually think it's made people who know the case and the people in the case go back to being able to make a recommendation.'* FG2 H

They were concerned about the *'quality'* of experts, a matter they linked to the payment rates, the need for experts to be *'quick'* and the *'availability'* of experts with little experience in court work. The pressure to complete in 26 weeks meant that if an expert were used it was crucial that they produce a properly focussed, good quality assessment because repeating it would cause *'massive delay'* FG1 D.

External experts were involved at all stages of the legal process. They were commissioned *before* the proceedings were brought, *early* in the proceedings at the CMH (Case Management Hearing) and *later*, after the last CMH, at or after the IRH (Issues Resolution Hearing). Figure 7.3 shows the proportion of cases with experts at these three stages.

**Figure 7.3: Timing of the appointment of experts (S2 only)**



Expert reports were commissioned in 44.1% of cases before the proceedings were started. There were two main reasons for this. First, these assessments were beyond the expertise of local authority social workers - medical assessments of children's health or injuries; psychiatric or psychological assessments of parents; and assessments of parents' litigation capacity where this was in doubt. Secondly, where local authority staff resources were over-stretched, social work assessments were commissioned externally. In over half of the cases local authority social workers undertook all pre-proceedings assessments and experts were not used at this stage. One expert was commissioned in a quarter of cases and the

remaining fifth had two or more. Psychological or psychiatric assessments of parents, sought in 25.1% of cases, were the most common expert assessment at this stage.

Using experts outside proceedings was a concern for local authorities because they could not share the costs with the other parties, however managers also had to consider that failing to obtain an assessment could undermine care planning or jeopardize the case:

*'Well I think we were perhaps over-using [experts] because we have gone to a systemic model, and I know with cost cuts and everything else, and with our Clinical Hubs being revised, that we are trying to look to bring more of the assessments in-house.'* LA B SWM1

As well as the issue of costs, using experts pre-proceedings was thought to slow down work on the case, but assessments, whether done in-house or by experts, provided necessary knowledge for working with the family:

*'We do psychological assessments or a cognitive assessment, the parenting assessments...Hair strand, drugs testing and alcohol...and learning difficulties, various things that we might do in [pre-proceedings] ... I think they do make a difference in how the parenting assessment is undertaken, or how we work with the family, especially if the cognitive assessment comes back saying the parents have got learning difficulties ...and we recommend you work with them in a specific way.'* LA D SWM2

The courts appointed experts in three-fifths of cases (61.4%), with only one expert being used in the majority of these. Most of these assessments were ordered at the CMH (or FCMH) with psychological or psychiatric assessment of parents being most common. In only 19.4% (37 cases) were experts were appointed to conduct assessments after the final CMH. These late expert appointments were most frequently to assess parental capacity or for viability or full assessments of relatives who had been put forward late in the proceedings. The requirement to assess potential carers quickly at this stage and the court's decision to allow a further assessment of carers rejected by the local authority were both factors in these late appointments. In addition, DNA and substance misuse tests were undertaken at various stages: 25% of cases involved DNA tests to establish/ confirm paternity; 41% involved testing for substance misuse.

There was considerable variation between Areas in the use of experts. Experts were used in Areas B and C because the courts wanted expert reports and approved applications for experts from parents and Cafcass guardians, and because the local authority commissioned work from independent social workers (ISWs) or psychologists due to lacking capacity to conduct assessments required for proceedings in the time allowed, or at all. In contrast, social work managers and lawyers in Areas A, D and F said that their local court was satisfied with the assessments their social workers provided:

*'[O]ne of the major changes, that is the shift ... about the recognition of the social worker as expert and I really sense that massively, because I was really frustrated beforehand when we used to go to court and there were all these experts assessments and the guardian's view etc, there was everybody's view was more important than the social worker's.'* LA A SWM3

*'The judges ....seem to be happier with local authority assessments ... [T]he expectation is parenting assessments now are stand-alone reports ... and we will come up with an assessment that the court is asking from us and the courts do usually listen to what we have to say... I think we used to buy into that and go, "okay we will have an expert report" ... but I think that's better now, definitely.'* LA D SWM8

*'I think now that there is much more emphasis on the fact that the social worker is a professional, they are trained to do assessments, parenting assessments etc and there is much more emphasis on accepting the parenting assessments from the social workers. So, in terms of their status within the courts, I think it is much better now.'* LA F IRO1

There were also differences between Areas in the timing of expert appointments: experts were used *before* proceedings in two-thirds of cases in Areas B and C but in less than a quarter of cases in Areas E and F. In Area E, there were concerns about the costs and some experience of the court requiring further assessments despite local authority work, which discouraged the use of experts at this stage. In Area B, local authority concern about its excessive use of experts, pre-proceedings, had resulted in reconfiguring services to make more use of in-house psychologists. Once proceedings had been started, there were *early* expert appointments in over 60% of cases, ranging from more than three-quarters of cases in Area C to around a third of cases in Area A. The local authority lawyer explained that this reflected the views of the local judge, who had also refused the local authority's requests for assessments in proceedings:

*'We have a very strong directive from our DFJ... that any party will have a long way to go to be able to prove that [an expert assessment] is required within proceedings.'* LA A LAS1

Late assessments were ordered in 20% of cases overall, with courts ordering such assessments in more than a third of cases in Areas B and D but in 5% or fewer cases in Areas A and F. Most late assessments considered either the potential for reunification or kin placements:

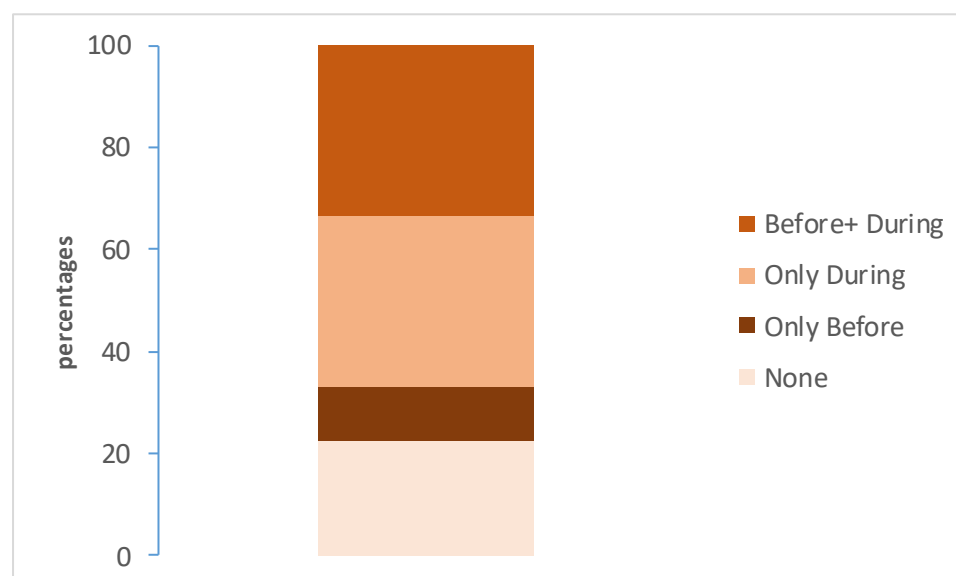
*'The vast majority I would say of ...our serious kinship assessments, where it might go somewhere are actually done within proceedings. ...Partly because of the expectations of the courts and guardians, that proceedings are still the most important thing.'* LA E SWM1

There was very little difference in the use of experts for cases with different final orders, apart from a slightly higher rate for those ending with SGOs (with or without a supervision order). This relates to the court's reliance on experts for some kin assessments outlined above.

Figure 7.4, below, shows the use of experts (other than substance misuse or DNA tests) at all stages of the legal process. In just under a quarter of cases (22.6%) no expert assessments were commissioned and in another 10.3% experts were only used in the pre-proceedings process. A third of cases (33.8%) had experts only in the proceedings and the remaining third both before and during the proceedings. These expert assessments were in addition to the assessments by local authority social workers involved in the case.

The number of experts commissioned during the proceedings ranged from 0 to 8, with a third of cases having no experts, another third just one expert and the remaining third between 2 and 8 experts. The use of two or more experts was lowest in Area A (15%) and highest in Area B (50%) but Areas C and D had nearly as high proportions of cases with multiple experts. Overall, it appeared that there had been some success both in reducing the use of experts and in front-loading the proceedings. Moreover, the interviews with local authority staff suggested that fewer external experts (mainly Independent Social Workers) would have been used if in-house resources had been available to fit with the timescales.

**Figure 7.4: Use of experts at the different stages of cases (S2 only)**



The rate for refusal of assessments was 19%. Areas that made more use of experts also refused more applications to appoint them. The culture of reliance on experts remained strong in Area B with the court's willingness to appoint experts (even late in the proceedings) being tested in more than one-third of cases. This Area had the highest rate of appointment of experts in proceedings; the high rates of both use and refusal suggest that the 'necessary' test was being interpreted less restrictively, and perhaps less consistently, so that practitioners continued to seek experts.

A judge in FG1 (not from Area B) suggested an alternative explanation for a high refusal rate:

*'We've got a very high number of applications for independent social workers and psychological assessments, so we've done an analysis of this to find out why this has gone on and invariably the ISWs are coming in on behalf of the parents because they don't like the assessment that the LA has done. Over 50% of them have been refused but that is not stopping the applications being made. So, I've asked why this is going on and I'm told it's because [lawyers] can say to the parents we made the application, but the judge refused it.'*  
FG1 B

The impact of appointing experts on case duration is discussed below.

## *Hearings*

The PLO identifies two key hearings the CMH (Case Management Hearing) and the IRH (Issues Resolution Hearing). It also provides for: an initial hearing before the CMH for contested interim applications or urgent directions; a further case management hearing (FCMH); and a final hearing after the IRH where matters remain unresolved. In practice, the number of hearings was often not so limited or clearly designated: there were cases with more than one contested interim care order application, with more than four CMHs, and two with four IRHs. Two-thirds of cases involved a FCMH. In a small number of cases the structure and approach of the PLO appeared to have been completely ignored.

The mean number of hearings for S2 cases was 4.52, with a median of 5 and a range of 2 to 12, with four of the six Areas having cases with 10 or more hearings. There were statistically significant differences between Area B, which had the highest average number of hearings, 5.97, and Areas A and E, which both had averages below 4. Data on the number of hearings were not collected for S1 but in the Care Profiling Study, which used data from cases issued in 2004, the average number of interim hearings was 8.4, with total hearings exceeding 10 (Masson et al 2008: 48).

A distinction of the 2014 reforms was the emphasis on the IRH, 'use that must be made of the IRH wherever possible, and if appropriate with the calling of oral evidence, to determine discrete issues and, if possible, the entire case.' (Munby 2013a) Although there was an IRH stage in the PLO 2008, only one S1 case concluded at this point. Completing cases at an IRH saves court time, reduces other costs to the public purse including legal aid and local authority hearing costs and saves social worker time. Importantly, it also allows the period of uncertainty for the child to be ended and plans to be implemented earlier. Parents also benefit from ending their involvement with the court.

There were 72 cases (35.5%) which completed at an IRH; for 65, this was the first IRH and the second for the remaining 7. There was a very substantial difference between Areas in the proportion of cases completed at the IRH, ranging from 62.5% of cases in A to only 10% in F. Cases in S2 completing at IRH had significantly fewer hearings, 3.41, than those ending at a Final Hearing, 5.18.

Conclusion at the IRH depends on agreement between the parties on the proposed plan and order, or at least concession, an acceptance that the court will not reach any other conclusion. Agreement is most likely where the local authority's plan is return to/remain with the parents but is not limited to such cases (see Chapter 9). Cases can also be completed where the parents have disengaged from the process and there are no potential carers in the wider family. The case must be 'ready' – all the evidence and any necessary assessments of potential carers must be available for the hearing. If a substantial dispute, requiring oral evidence, remains the case cannot be concluded at the IRH but the issues in dispute may be narrowed by establishing what (and whose) oral evidence is required to decide the case. Listing practices are also an important factor – where a final hearing has already been fixed, the parties may be less inclined to accept an earlier conclusion, as judges in the Focus Groups noted. Also, sufficient time must be available for issues to be discussed

in court and with the parties. Research into settlement conferences has concluded that well conducted IRHs have a similar potential to resolve cases (Brophy 2019; Summerfield and Pehkonen 2019: 19). Indeed, the settlement rate in conferences outside Liverpool (where the process was first introduced) was no higher than for IRHs in this study.

Judges in the Focus Groups discussed their experience with IRHs and the factors that contributed to resolution of cases at them. The preparation of the case from the very beginning made possible completion at the IRH:

*'I have a very high rate of success at IRHs but I think the work is done at the very first hearing which is the point when you set out what the parents will need to do in terms of changing and what you're looking for, in the same way as you've told them very clearly about other family members.... And therefore, a lot of IRHs are very easy ... to conduct because you're saying, "I told you what you had to do, you haven't done it, I've got all of this evidence, what positive case can you put forward? Go outside and have a chat." It's a continuation of an approach that if you start at the beginning, you're preparing yourself for that IRH right back at 4 months before and [are] not coming into an IRH cold and giving the parents messages as if it's the first time.'* FG1 G

In addition, the judges agreed that it was important *'to give the parents time'*; to know that they had been well-represented by advocates *'who have done their job'*; and for there to be a culture amongst local practitioners which supported completion at the IRH:

*'[A]t the beginning it was very difficult to get people to begin to accept that there were issues that needed to be resolved and could be resolved at that hearing. It took a long time after the PLO came in for that to become the way that we did it. It's now got there, I hope.'* FG2 A

Other judges commented that they rarely resolved cases but did *'shorten the final hearing from 4 days to 1, or even half a day'* (FG2 G) or knew a judge at their court *'who refuses to do anything at an IRH other than almost just listen and he never settles anything.'* (FG1 G)

Interviewees from LA A, where the highest proportion of cases was resolved at an IRH stressed the professionals were *'aligned'* in accepting the *'robust'* approach of the court, and the social work teams were *'very stable and very experienced'* and worked closely with Cafcass. The social worker's contribution was crucial:

*'I think it is just by hard work, hard work of the social worker, the communication between the social worker and the Guardian, and the communication with the social worker and the parents. ... It may not necessarily be what the parents agree with, but sometimes they are in the right emotional stage where they can see that actually they can't cope at the moment and it is going to be the right option for the child'.* LA A SWM4

In contrast, interviewees from LA F, which had the lowest proportion of cases completed at IRH spoke of *'parents conceding at the final hearing'* (SWM2) and cases *'folding on day 1'* (LAS) and only mentioned early completion where parents had *'disengaged'* (IRO1) and lawyers had no instructions.



Overall, being able to complete the case at the IRH depended on the efforts and attitudes of all the professionals and the logistic arrangements which ensured that all the evidence was filed ready for the IRH and provided sufficient time for it. Whilst there were cases where the factual matrix naturally resulted in a common view between the local authority, parents, Cafcass and the child, established relationships between social workers and parents, between parents and their representatives and trust in the court could result in resolution in more difficult cases through agreement that there was only one realistic outcome, albeit one which the parents, or the local authority or the guardian or the child did not really want.

Figure 9.2 and table 9.1, below, compare the orders made at the IRH and Final Hearing in S2.

#### *Length of Final Hearings*

There was very little difference between the two samples in the length of Final Hearings with around two-thirds of cases completing at a hearing that lasted under 1 day and another 20% completing within 3 days. Overall, there were 24 cases where the Final Hearing, including finding of facts took 6 or more days with the longest hearing lasting 17 days.

There were 50 S2 cases, just under a quarter of the sample, which ended at a Final Hearing lasting 1 day or less. Although some of these could not have been resolved at the IRH because of incomplete assessments this does suggest considerable potential for more completion at IRH. If all the courts had achieved the average for case completion at IRH, there would have been 12 fewer Final Hearings; if they had achieved the same rate as Area A there would have been 55 fewer Final Hearings.

### **7.4 The assessment of kin**

There was greater emphasis on placing children within their extended family in S2 than there had been in S1 (see Chapters 8 and 9). Local authorities are required to develop and publish policies on family and friends care (DfE 2011a) and this is promoted as a way of supporting families and providing permanency for children (FRG 2010; Simmonds 2011). Factors in both local authorities and the courts have driven this change. Within local authorities, increased recognition of the advantages for children of family and friends care, in terms of placement stability and identity has combined with shortages of foster placements to encourage kin care. In addition, the creation of special guardianship as a framework for permanent kin care and increased support for special guardians has encouraged relatives to provide care on this more formal basis (Wade et al 2014). Within courts, case decisions have emphasised the proportionality of care within the extended family over adoption or stranger foster care (*Re B-S* 2013).

Assessing kin as possible carers for children subject to care proceeding presented four problems for local authorities and courts: identifying and contacting kin; the numbers of assessments and the resources required; the timing of assessments; and the time allowed for them.

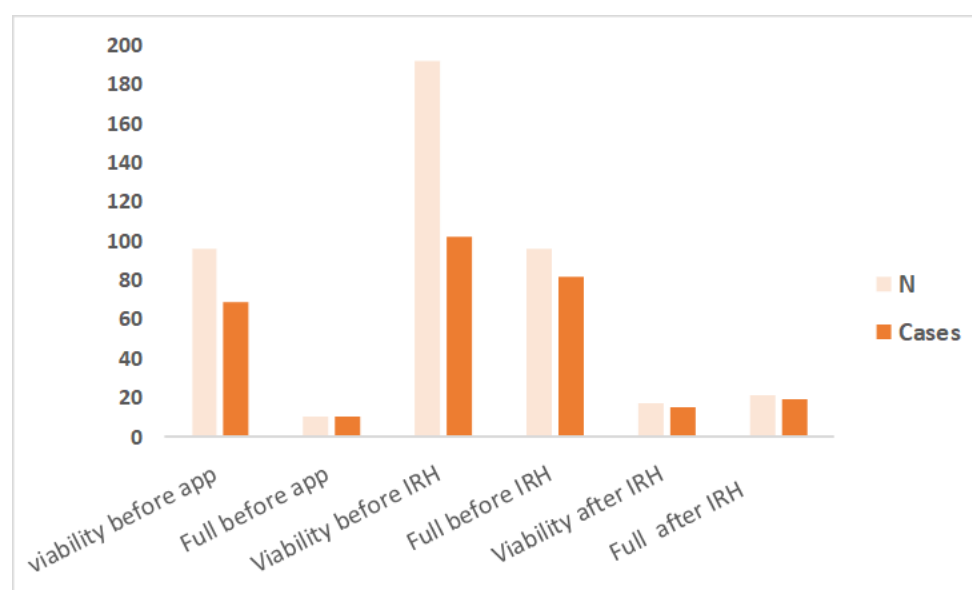
Statutory *Children Act Guidance, Volume 1* (DfE 2014d) advises local authorities of the importance of identifying and involving family members 'as early as possible' and children

should be placed ‘with suitable wider family’ if they cannot safely live with their parents. Family members should be helped to make decisions by holding family group conferences (paras 2.22-24). The PLO requires assessments of relative carers (where available) to be filed with the care application. However, before proceedings local authorities can only identify wider family members with parental co-operation; family rifts and a wish to conceal the extent of their difficulties meant that some parents were unwilling to provide this information. Even where social workers knew of family members, they were generally unwilling to contact them unless parents agreed to this.

Family Group Conferences or Family Meetings were known to have taken place in 79 cases (39%) in S2 (this information was not collected for S1) and refused by the family in two other cases. Not all FGCs identified potential carers; some, particularly before proceedings, were focused on identifying family support for the parents and children, and others clarified that relatives did not want to take on the children’s care. FGCs/ Family Meetings were commonly held in 5 of the 6 LAs with between 35% and 50% of cases having at least one such meeting, with these taking place *before* proceedings were issued in half of these cases. Early planning was most common in LA A, where a meeting with family members was held before proceedings in 30% of cases. Where there had been no FGC/Family Meeting, the Children’s Guardian or an ISW sometimes recommended this or the court directed it. Fewer FGCs/ Family Meetings were held in LA D; there were only 5 cases (12.5%) where it was clear that an FGC had been held, all but one before the proceedings.

Figure 7.5 shows the numbers of kin assessments and cases with kin assessments at different stages of the proceedings. Over a third of cases in Sample 2 involved viability assessments of kin before the proceedings were started, with 11% of cases having two or more such assessments. Full kin assessments were completed in 10 cases before the proceedings.

**Figure 7.5: Numbers and timing of starting / ordering kin assessments (S2 only)**



Once proceedings started courts pressed parents to provide the names of relatives, who they wanted considered as carers. Judges made directions that families should provide a list of people they wanted considered by a specific date and some insisted that contact details were provided before parents left court. Despite this, relatives came forward later or having said they did not wish to be considered, changed their minds. The possibility that a child would be adopted encouraged parents to suggest carers and relatives to put themselves forward. Such applications might not be permitted:

*'And then you're explaining in clear terms, please don't put somebody forward at the 11th hour, this is your opportunity, it will be too late if you do it then and I won't allow it.'* FG1 G

However, all local authorities had been directed to assess such latecomers:

*'I think the local authority are quite reluctant to say, "No, we're not assessing this person, simply because they put their hands up too late." umm.... So, I think it might be quite difficult for the court to give guidance on that, I just think it is an issue, it is the problem that we have to deal with on a case-by-case basis.'* LA D LAS

*'[S]ometimes with parents and family members who turn up at the last minute, what is happening is that the courts are making the Final Order and telling the local authority to carry on and do their kinship assessments after the orders have been made.... our designated judge, that is how he is dealing with cases, "I will give you your Care Order and you can carry on with your kinship assessment and then you can come back and discharge the Care Order."* LA B LAS

Viability assessments were ordered before the IRH in nearly 60% of cases, with a total of 192, and up to seven assessments in a single case. Full assessments were known to have been ordered in 82 cases at this stage, with eight cases having two full assessments and three cases having three. There were 15 viability and 21 full assessments ordered at or after the IRH, allowing little time within the standard timetable to complete assessments or test placements, see figure 7.5.

Judicial practice also varied about the number of assessments allowed for the same children. One judge complained that *'the court timetable had been frustrated'* (FG1 B) by a local authority assessing relatives contrary to their express direction because the Agency Decision Maker (ADM) would not approve an adoption plan unless all relatives had been ruled out. Indeed, local authority interviewees emphasised this point. It was usual to direct full assessments if viability assessments were positive, but full assessments, usually by an ISW, were sometimes also allowed where the local authority had found relatives unsuitable.

The length of time the court allowed for assessments appeared frequently to be determined by the case timetable. Where relatives were identified early (by the CMH) there was time for a 12 week assessment, but it was common for the courts to reduce the time set for assessments ordered later to maintain the case timetable. This was a major concern for local authorities because it resulted in limited assessments and did not give relatives time to consider the complications of caring for a child who had been harmed by another family member. Concerns were heightened where the relative did not know the child:

*'[T]his whole thing about that assessments are being done in such a short period of time that ... how can the carer be prepared for taking ... such a life-changing decision... and to care for a child who would be damaged and traumatised and often you are having pressure put on the family... How can you do quality assessments when they are being rushed?'* LA B SWM1

*'[T]hey may only be given six to eight weeks to do their assessment, of somebody they don't even know. And doing the checks can take half that time at least. And if there is delay that actually some of the concerns don't come out until the end of your assessment.'* LA D SWM3

Also, there were long-term consequences of rushed assessments:

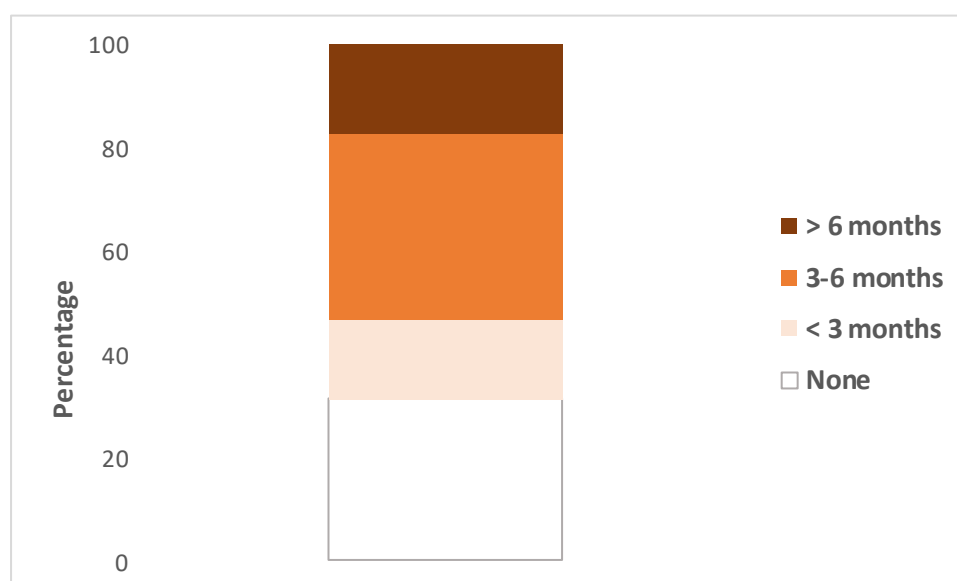
*'[T]he quality of assessments of special guardians should be as good as that assessment for adoption and I think that will be interesting to see whether things shift, because clearly I think we are going to start seeing, if we haven't already some special guardianship arrangements in early adolescence etc and them maybe not panning out and breakdowns and stuff. So it is obviously about how robust the special guardian assessment is.'* LA A SWM3

Judges were also concerned about the very limited time given to assess carers for SGOs. Two suggested an alternative approach, similar to that overturned by the Court of Appeal in *Re P-S* (2018) and noted by the local authority lawyer in LA B (above):

*'Social workers say to me, the difficulty with these is we're asking you to do them within 8 to 10 weeks to comply with the 26-week timetable; think how long you would think about assessing adopters to take on a child full-time. It is one step down from adoption. Perhaps we ought to be thinking more about finishing the proceedings under a CO with the plan being the assessment or indeed making a CAO.'* FG1 B

The shortest period allowed for a full SGO assessment was two weeks.

**Figure 7.6: Length of time children placed with kin before SGO**



Once relatives who were not already caring for the children were approved, it was common for children be placed with them either as connected carers or under an Interim Child Arrangements Order (ICAO). Where a relative placement was only decided at the Final Hearing children frequently moved to their SGO carer immediately the order was made and with little preparation. Figure 7.6 shows the length of time children had spent with carers before the SGO was made. Thirty per cent of children made subject to SGOs had not lived with their SGO carer before the order was made. Ten weeks or less had been allowed for the assessment of half these children's carers. Harwin et al's study of SGOs made in care proceedings had similar findings (Harwin et al 2019).

In response to concerns about the assessment of SGO carers, the Special Guardianship Regulations have been amended (2016 SI No 111) and further guidance is being prepared for the courts (FJC 2019); and see Chapters 9 and 13, below.

Whether or not a child who left care with a CAO or SGO also went to a carer who had not previously looked after them was not clear from the CLA database. The database uses the following codes: E41 RO/CAO granted; E43 'Special guardianship made to former foster carers'; and E44 'Special guardianship made to carers other than former foster carers' (DfE 2015a). These do not enable the Central Government or local authorities to monitor the numbers of children leaving to the care of people without experience of looking after them, a crucial issue in preparing and supporting carer and child. Nor do the codes appear to be used consistently. Children remaining with relative carers who had been Reg 24 carers under ICOs or s.20 were frequently (but not always) coded E44 whilst relatives who happened to be approved as foster carers were coded as E43 even though they had become the children's carers only because they were related to them. The lack of reference to the carer's relationship to the child gives the false impression that (unrelated) foster carers commonly take on full responsibility as special guardians for children. There was no evidence of this in the Study.

The CLA codes should be amended to identify 1) whether the carer is related to the child; and 2) whether the carer is already caring for the child when the order ending care is made. These distinctions should also be applied to CAOs. This will allow local authorities and the DfE to monitor the use of these orders, their effect on the need for support and policies promoting SGOs by unrelated foster carers.

## **7.5 Case Duration**

Reducing the length of care proceedings was the primary aim of the 2014 reforms (see Chapter 2), which set a time limit of 26 weeks for their completion. Extensions are allowed but only where the judge concludes that this is 'necessary to enable the court to resolve the proceedings justly' (CFA 2014, s.14(5)). The average length of proceedings in S1 was 53.34 weeks, which was halved to 26.62 weeks for S2. Just 1 in 8 cases in S1 completed in 26 weeks or less, compared with almost two-thirds of S2 cases. There were 50 S2 cases which took 32 weeks (the time limit with a single 6 week extension) including 5 over 50 weeks; the longest S2 case took 64 weeks.

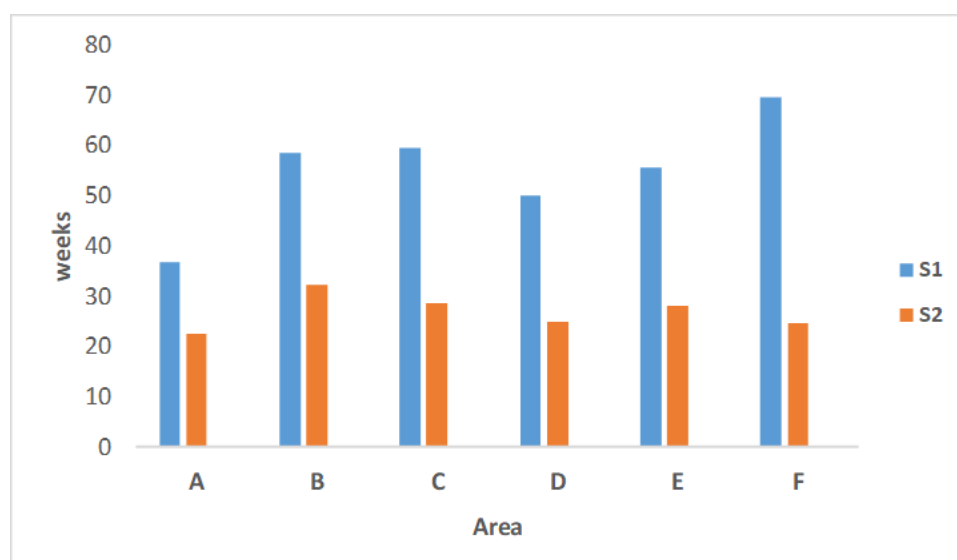
Completion at the IRH was a major factor in achieving the mean of 26.62 weeks but more than half of all S2 cases completing at a Final Hearing completed in less than 26 weeks (median = 25.5 weeks). There was a statistically significant difference in the mean duration of cases completing at IRH (22.68 weeks) compared with at a Final Hearing (28.82 weeks) ( $p < 0.0001$ ). There was also a statistically significant difference ( $p < 0.0001$ ) between the duration of cases with no experts (or experts only before the proceedings) (22.23 weeks) and those with experts in the proceedings (28.98 weeks). There was a statistically significant difference between the duration of cases with one or two or more experts in the proceedings ( $p < 0.005$ ); the mean duration in weeks for cases with only 1 expert was 26.57 and that for 2 or more 31.67. Again, more than half the cases with one expert in proceedings completed within 26 weeks (median = 25 weeks). This indicates that judges were making efforts to meet the time limit when agreeing expert appointments. Cases with judicial continuity (~26.45 weeks) were also shorter than those heard by more than one judge (~28.41 weeks) but this difference was not statistically significant. Although judicial continuity could help keep cases on track, timeliness was evident in cases without a single judge (and absent in some cases where one judge had sole management). As might be expected given the intention to allocate simple cases to magistrates, cases allocated to magistrates were shorter than those heard by judges (~ 23.31 weeks).

The use of experts in proceedings and completion at the IRH are not independent. Cases with experts appointed in the proceedings were statistically less likely to complete at an IRH ( $p < 0.01$ ). A party may want more time to consider the expert's report before reaching a decision and therefore be unwilling to conclude the case at IRH. They may even want to cross-examine the expert with a view to obtaining a concession or different recommendation. No statistically significant relationship was found between judicial continuity and completion at the IRH. Although where cases have been heard by a single judge the parties may be more willing to accept the 'steer' the judge gives at the IRH, other factors – the time allowed for the IRH and the judge's approach to completing at this point

(discussed above) - may prevent this. Also, the approach of the judge hearing the IRH may be more important for completion than the fact that this judge has heard the case throughout.

There was substantial variation in average case duration between Areas in each sample, see figure 7.7. Average length ranged from 37 to 70 weeks in S1 and 22 to 32 weeks in S2. The mean duration for cases in S2 was highest in Area B, 32.17 weeks, and lowest in Area A, 22.33 weeks. The reduction in case length also varied; the greatest improvement was seen in Area F, which had had the longest cases in S1. The high S2 mean in Area B reflected the proportion of cases which lasted for 32 weeks or longer, which at 43% was higher than in any other Area. A third of cases in both Areas C and E took 32 weeks or more but this was the case for only 17.5% of cases in Area D and only 10% in Areas A and F. Factors behind the variations are discussed in section 7.7, below.

**Figure 7.7: Mean case duration in weeks by Area and sample**



## 7.6 Views on Operating the PLO

Judges and local authority interviewees discussed the 26 week time limit and what contributed to the timely completion of cases. There was general agreement about the importance of four factors: the structure and components of the PLO system – pre-proceedings work including the local authority’s preparation; procedures, time-limits and timetables, which were designed to keep cases focused and on track; the judicial approaches to operating the PLO, particularly the ways judicial authority was deployed to manage cases; and the efforts of all the parties to comply with requirements and deadlines and to ensure that others did so as well.

The judges who attended the focus groups were generally positive about the PLO; it was a ‘*huge motivator*’ and provided ‘*excellent discipline*’ (FG2 E) for the parties and had changed ‘*the culture*’ for the better (FG1 G):

*'In many ways it is better because we now have a more disciplined approach, a more structured approach, a more focused approach. You can look carefully at the real issues and insist that everybody focuses on the real issues and the realistic outcomes. To that extent I think it is an improvement, as it was intended to be.'* FG1 C

*'[I]t gave the family courts the power to say, "Look, we've got a target here, let's concentrate on what the key issues are" and stopped an awful lot of indecision because everyone had a target. So I think on the whole it's a very good introduction but obviously what you've then got to do is do justice, which does include discipline, focus and the court controlling the process, but ... maybe something happens that derails it, and of course, what you can't then do is sacrifice the fairness and a just outcome ...'* FG2 F

However, they were very conscious of the 'pressure' on them to complete cases in 26 weeks and aware of their court's statistics. They set up 'tight controls' (FG1 G) from the very beginning of the case and used their 'judicial authority' (FG1 C) to keep cases on track. Partly because of the increase in cases, they worked longer hours, and during lunchtimes, to keep on top of their care cases (FG1 D), dealing with uncontentious requests which would not impact on the timetable via email and requiring justifications at a hearing if the application would extend the case (FG1 B). There was general agreement that additional resources for assessments, therapy, services and judges would relieve the pressure on them and could lead to better decisions.

These judges expressed some anxieties about whether some types of case could be fairly completed within 26 weeks. The types of case identified were: those involving young mothers, who might need more time to demonstrate their ability to care (FG2 A); cases involving families from overseas, where ICACU (the International Child Abduction and Contact Unit) was involved (FG2 D); and 'parents with drug problems because 26 weeks isn't sufficient time to get a good prognosis' (FG2 H). Where potential relative carers came forward (or were identified) late in the proceedings, completing in 26 weeks could be difficult (see 7.4, above). Local authority staff also commented on the pressure they felt to work within the court's timetable. Once the application had been made 'the clock was ticking' (LA F IRO1). If additional work was required, such as an assessment of a potential kin carer, it had to be done within the 'existing timetable' (LA A LAS). Whilst the timescale was seen as 'do-able' (LA D SWM1) at least where there had been pre-proceedings work, the pressure it imposed felt 'relentless' (LA E SWM4). Only one interviewee suggested that time limits had resulted in lower quality work, but it was clear to the researchers that very restricted timescales for kin assessments had not provided sufficient time to support carers to prepare for their new responsibilities or children for moving to live with them (see above, 7.4).

The preponderance of the views expressed by lawyers and social worker managers from the Study local authorities about the PLO were positive. They welcomed 'knowing the process and what was expected of them' (LA E SWM1) and the way it had 'focused' everyone on the issues (LA C IRO1). The 26 week timetable worked because local authorities had thoroughly prepared their case:



*'[W]hen you walk into this twenty-six week timescale you start the conclusion of care proceedings. I think it is much more clear and very much more focussed about what needs to happen, when it needs to happen, who is going to do it and what timescale it is going to be done within...'* LA A IRO

Social work managers from every local authority spoke about the benefits for children of quicker, earlier decision-making. The 26 week timescale *'stopped a lot of drift'* (LA E IRO1), *'children are not left waiting'* (LA A SWM3), there was *'much more child-focussed practice'* (LA B SWM9), it was *'fairer for children'* (LA D SWM1), *'decisions are made within their time'* (LA B SWM1) and children were going to *'adoptive placements much younger... which is positive'* (LA F IRO1).

Like the judges, these interviewees also identified cases which they did not think could be routinely completed in 26 weeks. The most commonly referred were cases involving families from overseas or with relatives overseas who needed to be assessed as carers. Other types of case involved relative carers who were identified late in the process, where time was needed for thorough assessments and preparation, and those where the choice was between re-unification and adoption and the parent had started to engage with services. Lawyers and managers in LA B suggested that the community they served with many migrant families meant care cases were too *'complex'* to allow completion in 26 weeks.

A recurrent theme amongst lawyers and social work managers was the need for greater flexibility in the application of the 26 week timescale. Flexibility was needed to allow placements with kin carers to be tested out before SGOs were made:

*'And there was quite a debate with the judiciary ... if you want us to comply with the 26 weeks, this is the way it has to be done because we are having to do those assessments in that time and there isn't time, there just isn't the time to test it out. So there is a choice to be made - so which is the choice that the court is going to plump for? - the 26 week deadline because they are so sure that extending that is more harmful than not to the child, or being more flexible in terms of the deadline? And I think this court has chosen to be more flexible.'* LA E LAS

Interviewees appreciated some greater flexibility but noted that whilst some judges were prepared to allow this, others were not or would only do so for particular reasons:

*'[S]ome cases take more than 26 weeks and actually there should be some flexibility with that, rather than a real, "It must happen within 26 weeks, it must happen within 26 weeks on every case." Actually, a lot of cases just don't fit into that, they are much more complicated and need to fall outside of that 26 weeks. .... there are occasions when judges will allow it, but on some cases it can feel rushed. I mean on some it doesn't, but with some it can feel like everything is being done very, very quickly and a longer period of time when things could be tested would be more helpful.'* LA C SWM2

*'I think sometimes, that judges need to be a little more flexible, if for any reasons, like the family, it doesn't fit. It shouldn't be all about saying they have done it in 26 weeks.'* LA D SWM8

A rigid focus on timescales was viewed by some as risking the quality of decisions; greater flexibility could produce better decisions for some families:

*'I think there are still worries about some of the impact on the quality of decision making.... I think there are some negative consequences for some families because of that real focus on timescales so maybe there needs to be a kind of rebalancing of all of that so that it is a bit more flexible'. LA B SWM4*

*'I do question sometimes whether allowing the parents a little bit longer time to evidence whether they can change and sustain that change should be considered. ...there are very specific situations ... not every single court case ends in 26 weeks, and from that perspective it's reassuring that there's opportunities for the judiciary to consider the specific circumstances of each case and allow for that to happen when it is suitable.' LA F IRO2*

## **7.7 Variations in the operation of the PLO**

As the previous section makes clear, there were variations between courts and judges in the way the strictures of the PLO should be and were applied, and between the Study local authorities about the ways to respond to them. As a consequence, there were considerable variations in: the appointment of experts; judicial continuity; the use of IRHs to complete cases; the length of care proceedings; and the time children and families had to wait before court decisions were made. Variations existed across the Study but were most marked between LA A and LA B and the courts which served them. These variations impacted on: the use of court resources and judge time; local authority costs in terms of representation and attendance at hearings, commissioning or contributing to the cost of expert reports; and caring for children during the proceedings; the demands on Cafcass' resources and children's guardians; and the costs to the Legal Aid Agency of providing representation and paying for expert assessments. They also added to the uncertainty for children and families, and for the professionals with responsibilities to them in the proceedings.

A more rigid and consistent approach to the PLO, sticking to the timetable and applying the 'necessary test' for experts made clear to all parties, not just the local authority and Cafcass, what was expected, by when and at what standard. It carried with it the risk of forcing all cases, whatever their characteristics, into the same mould, which could not easily accommodate kin carers who were only identified late in proceedings or parents who made substantial changes during the proceedings. In contrast, a more flexible or varied approach risked losing sight of the need for a proportionate process, where just decisions were made in the child's timescale and returning to (or retaining) an approach which paid little attention to the consequences of delay for the child. Between these two alternatives there is a middle way with clear requirements, the right amount of flexibility and appropriate use of the power to extend proceedings, which should be applied in all courts. This middle way cannot avoid the need for interpretation and judgment but those who use the courts or serve in them should be confident that processes are applied similarly in other courts.

The idea of a middle way or a non-standard track was mentioned in the judiciary's paper on modernisation (Ryder 2012a) and is currently being considered by the Family Justice Council

for cases involving some relative carers, following a decision of the Court of Appeal and reference by the President of the Family Division (*Re P-S* 2018). Consultation and discussions between judges, and between judges, local authorities, lawyers and Cafcass, rather than Court of Appeal decisions based on single cases or Practice Directions issued with very limited consultation are a better way to identify which types of case require a different timetable and what that should be.

The differences in applying the test for commissioning experts and the increase in use of experts (Douglas 2019) also need to be addressed. Greater transparency, with the routine publication of statistics on the use of experts in proceedings (for what and at whose request) in each court would provide a basis for understanding the specialist knowledge the courts require. These statistics are available from the court's CMS but no analysis has been published. It would also provide the basis for a more objective (rather than adversarial) approach to standards of professional and expert evidence, preparation for those presenting such evidence and a common approach amongst the judiciary.

Overall, the PLO 2014 achieved very substantial reduction in the duration of care proceedings and number of hearings through the concerted efforts of all involved, particularly changes in local authority preparation of cases and more robust case management by the judiciary. Without this reduction, neither the family court nor local authorities would have been able to cope with the continued increase in cases. The reduction in case length has resulted in speedier decisions for most children subject to care proceedings and their families (see Chapters 10 and 11, below). It has also made very substantial demands on the social workers, lawyers and judges who have worked on these cases. Its impact on the orders made in care proceedings is discussed in Chapter 9.

## 7.8 Conclusion

The data collected for the *Pre-proceedings Study* (S1) enabled many comparisons to be made with proceedings after the PLO reforms but decisions not to collect data on expert appointments precluded comparisons about this part of the PLO. However, it was still possible to assess the operation of these provisions through using data collected for S2, including qualitative material.

The implementation of the PLO was largely effective in the 6 Areas (courts and local authorities) in the Study but there were clear weaknesses in securing judicial continuity in some courts and a few cases where effective case management was lacking. The pressure to complete cases in 26 weeks led to insufficient time being allowed for kin assessments and preparation of kin carers and children who went to live with them only when an SGO was made.

This chapter has answered **RQ6**, *To what extent do care proceedings under the new PLO result in different processes, plans, orders and outcomes after 12 months from those brought in 2009/10?* in relation to the court processes.

The main differences related to case courts/judicial officer, with a much lower proportion of S2 cases heard by magistrates; case structure and duration, with a third of cases completed

at an early final hearing (IRH) and case duration being halved; better preparation of applications by local authorities; and the appointment of children's guardians at the start of the case.

## **Summary**

Our evaluation of the operation of care proceedings after the PLO concluded that it had established effective working amongst key organisations within the family justice system. There was case preparation by local authorities, timely appointment of Cafcass/ Cafcass Cymru children's guardians and robust case management, which controlled the appointment of experts, and reduced the number of hearings and case length, compared with S1. Mean case duration for S2 was 26.62 weeks compared with 53.34 weeks for S1. There was more limited success in ensuring judicial continuity and completing cases at the IRH, both of which impact on case duration. There were wide variations across the sample in the proportion of cases completed at IRH and in judicial continuity. Time constraints and late presentation of potential relative carers also resulted in very limited time being allowed for some kin assessments; a third of children subject to an SGO in S2 moved to their carer only at the Final Hearing.

Judges, local authority lawyers and social work managers, who participated in focus groups or interviews, were generally very positive about the PLO. Judges felt it supported their efforts to keep cases proportional, restrict expert appointments and hear from social workers who know the family; local authority staff welcomed the greater emphasis on social workers' evidence and more timely decisions for children. Both favoured greater flexibility, allowing some cases to take longer and agreed on some of the circumstances where this should be allowed.

## Chapter 8 Care proceedings and the legal arrangements for children's care

### 8.1 Introduction

This chapter combines the analysis of the court and administrative data to examine children's care before and during the proceedings; the interview data adds local authority perspectives. This combining allows children's local authority care and service journeys to be separated into three periods: before the care proceedings application; during the proceedings; and after the proceedings have ended, and key decision points and decisions to be identified and examined. This makes it possible to see how local authority and court decisions interact with each other and together impact on the children subject to proceedings and their families. The first two periods, *before* and *during*, are the focus of this chapter, which specifically examines children's care before the proceedings and their entry into care; the legal arrangements for children's care during the proceedings and whether these differed between S1 and S2. Decisions made after the proceedings have ended are discussed in Chapter 10.

Bringing care proceedings involves lengthy processes even before the application to court, and this raises issues about the protection and support of children who have already been identified by the local authority as at risk of significant harm; the timing of court applications; and the balance of power between families, local authorities and courts. What can and should local authorities do without bringing proceedings? And what did the local authorities in the Study do? There are no clear rules or simple answers, only matters to avoid: delay, precipitate action, excessive pressure on parents and inadequate protection for children. Rather, findings reflect the broader issues of the relationship between law and social work, and between courts and local authorities, discussed in Chapter 4.

A speedy court application removes the opportunities the pre-proceedings process provides to avoid proceedings altogether (see Masson et al 2013 and Chapter 6, above) and adds to the demands on already overstretched courts (Lord Chief Justice 2018; Munby 2016; MacFarlane 2019). However, without care proceedings, parents have little or no access to legal advice and may agree to arrangements in ignorance of their rights. Social workers may be unable to take the action they consider best for children because they depend on parental agreement to services, including out of home care (s.20) to secure children's protection, and there is almost no court oversight of local authority action. This lack of court involvement has led to lawyers and the courts questioning whether local authorities should protect children without bringing proceedings (*Re W (Children)* 2014; Stather 2014) or should do so for only a limited time (Munby P in *Re N* 2015 and see Chapter 13). The imbalance of power between local authorities and parents, and parents' limited understanding of their position is a matter of concern (Lynch 2017), as is drift and delay in children's care, where arrangements are not overseen by a children's guardian and the court, with the possibility that the passage of time will exclude possibilities for children's care (*Herefordshire CC v AB* 2018).

Without bringing care proceedings, local authorities can apply to the court for an order to

remove (or retain) a child temporarily; an Emergency Protection Order (EPO) may be granted where risks to a child are very high and immediate action is required (ss. 44, 45, *Re CA* 2012; Masson et al 2008). Alternatively, local authorities may request the police use their (more limited) powers of police protection; the police can also act independently (Masson et al 2007).

In summary, before starting proceedings, the local authority's position is both weak and strong: weak in that it has no powers of compulsory intervention, only duties to safeguard and protect, and consequently social workers must gain and maintain parental agreement; but strong in that it has powers to support families and is only subject to limited court supervision under administrative law and the Human Rights Act rather than dependent on court decisions, reached through an adversarial process where the court has access to the professional assessment of a children's guardian and all parties are represented.

During the proceedings the local authority can seek, and the court may decide to grant, interim orders for a child's protection: an Interim Care Order (ICO) (s.38), giving the local authority parental responsibility, with or without removing the child from their home; an Interim Child Arrangements Order (ICAO) entrusting the care of a child to another person, almost always a parent or relative, and giving them (temporary) parental responsibility (ss. 8, 12); and/ or an Interim Supervision Order (ISO) (s.38) imposing a duty on the local authority to 'advise, assist and befriend' the child without any additional powers. ICOs can be used for placement with kin carers so long as they meet the regulatory requirements (2010 SI 959, reg 24; 2015 SI 1818, reg 26 for Wales) and are willing to be assessed, provide care on behalf of the local authority and can safeguard the child. Alternatively, the court may make an ICAO in favour of a relative, even if they are not parties to the proceedings or are considered unsuitable by the local authority.

To obtain interim orders, the local authority must establish the case for an ICO (and for removal) or an ISO. The parents and children's guardian may support or oppose. If an application is contested and not withdrawn, the court must find time for a hearing. Lack of court time creates incentives and pressures to agree, or to withdraw. The court's approach to granting orders provides the backdrop for such decisions (Mnookin and Kornhauser 1979; Pearce et al 2011) and the proportionality of any order, rather than the threshold test, is the main consideration. ICO with removal is a 'last resort' (*Re C* 2016, Holman J) and in cases of neglect, courts may be unwilling to make an ICO or permit removal because the local authority has accepted the situation for so long, because this will disrupt relationships or prejudice the main proceedings (*Re L-A* 2009; *Re L* 2013).

Case law indicates that the more restrictive approach to ICOs predated S1 (see *Re GR* 2010) and has continued. A study of 2004 care applications found that ICOs were granted in almost 80% of care proceedings; applications were contested in 20% but were granted in 87% of these (Masson et al 2008). Changes in the allocation of care proceedings resulted in more S2 cases being heard by judges (not magistrates) (see Chapter 7) and, possibly, a greater focus on legal arguments and contest. These changes also meant that judges rather than magistrates heard most EPO applications with the numbers declining from 2014 (MoJ

2018a). Also, for S2, the increase in cases added to the pressure on court time, and on the parties to make agreements rather than seek hearings. Similarly, the greater emphasis on placement within the family may have encouraged such placements during the interim stage, an approach underlined by a shortage of foster placements. For S1, the longer duration of both pre-proceedings and care proceedings extended the periods during which children were looked after or subject to interim orders, see Esther's case 3151, below.

Local authorities have the same duty to review placements for looked after children, irrespective of the legal provisions under which they are made (s.26; Review Regulations 1991, 1991 SI 895) but they only have parental responsibility for children subject to ICOs or COs and share that with the parents (s.33).

#### Esther 3151

Esther, 8, and her sister, 12, were black African children, both with disabilities and Special Educational Needs. The home conditions were very poor, as was the children's school attendance; they were repeatedly left home alone. The parents' relationship was marred by domestic violence and the mother's mental ill health; she believed the father was trying to kill the children and had threatened suicide. Social services involvement in the previous year had ended and the case had been closed. When the mother threatened to kill both herself and the children while the father was overseas, the children were taken into police protection. The following week the LA applied for an EPO and started care proceedings. The mother contested the ICO but it was granted; 2 months later the elder child returned home under an ISO. After 4 months this child was again removed under police protection when the mother made further threats; the mother was sectioned under the MHA. Delays resulting from: assessments of the parents; assessment of a relative who offered care but then withdrew; transfer of the case; and late filing of statements, meant that the case took 17 months from issue to the final hearing. Care orders were made; the older child changed placement and Esther remained in residential care.

## 8.2 Care before the start of proceedings

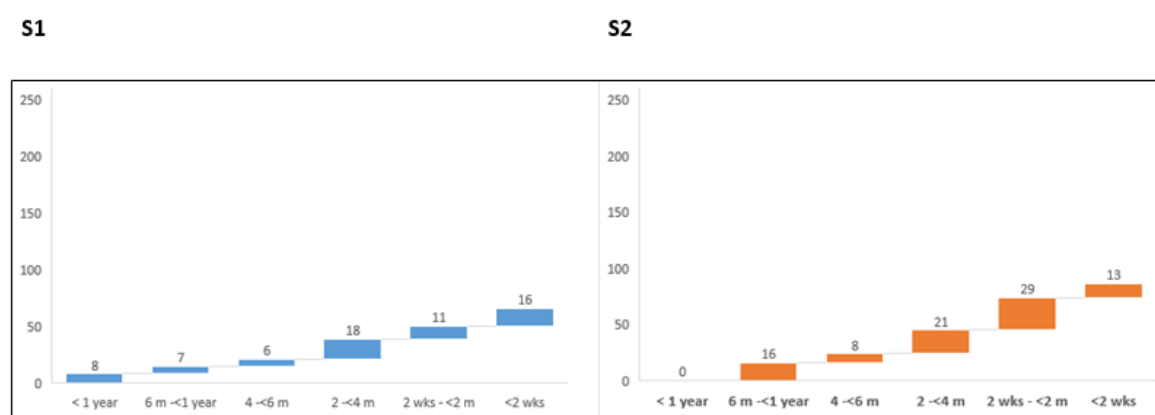
There were 164 children out of 596 identified in the data as looked after by the local authority continuously before the care proceedings were started, 27.5% overall (S1 26.5%; S2 28.3%, NS). For most of these children care was arranged with parental agreement under s.20, without using other legal powers. Police protection was used in respect of 127 children, 21.3% of the sample, with a higher percentage in S1, 23.9% than in S2 19% (NS). However, many children taken into police protection did not become looked after; there were only 20 children in the care proceedings sample present in the CLA database as looked after under police protection at a time related to the sample care proceedings. Some children had been subject to police protection briefly and then returned home, and others started a longer period of care with police protection followed by a s.20 agreement or an EPO and then care proceedings, an example being Isaac's case 4841, below.

**Isaac 4841**

Isaac was a black African boy aged 5. Police protection was first used after his mother had left him home alone. He was placed in foster care. His mother returned and collected him but some months later was evicted and went to live in a hostel with Isaac. A month before the proceedings, there was an incident at the hostel, Isaac was taken into police protection again and placed in temporary foster care for the weekend. A child protection conference was arranged but the mother and child disappeared to another area. The mother demanded accommodation from this local authority and when she refused to leave the office was detained under the Mental Health Act; Isaac was taken into police protection and returned to foster care in the original authority. An EPO was obtained, care proceedings were started and, after a contested hearing, an ICO was granted.

Figure 8.1 shows the timing of entry to care over the year before the care proceedings. Approximately a quarter of S1 children who were looked after before the care application entered care in each of the three periods shown on the chart closest to the application i.e. three-quarters entered less than 4 months before the application. The picture is similar for S2 but with a smaller proportion entered in the last two weeks before the application, possibly reflecting the lower use of care proceedings in response to crises and more planning of S2 proceedings (see Chapter 5).

**Figure 8.1: Timing of entry to care before the proceedings**



(Based on children's data: S1 66, S2 87).

EPOs were used to bring children into care or to keep them there beyond the period of police protection. EPO applications were made at the time, or immediately before, the care proceedings were issued for 37 children, from 26 families, 13 in each sample (overall 7%); only 27 of these children were shown as being in care under an EPO with the remaining children in care under s.20 or an ICO indicating that the EPO application resulted in the parents agreeing s.20 or the court making an ICO.



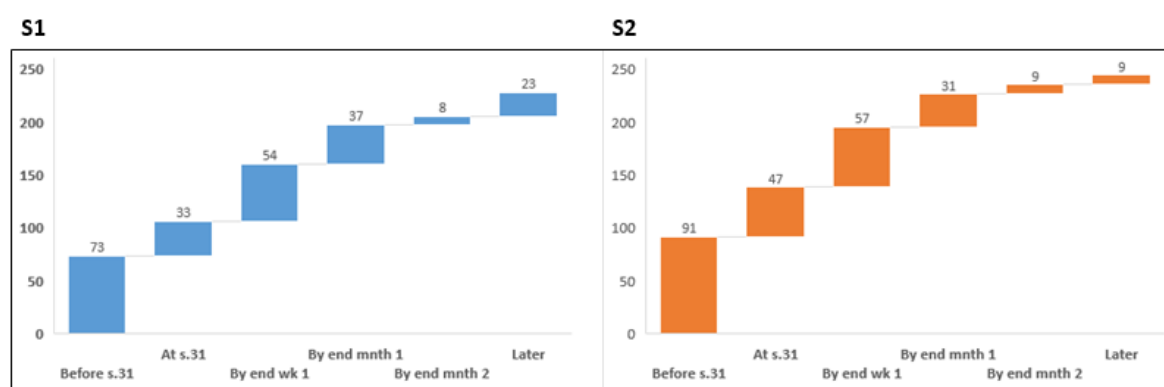
### 8.3 Care during the court proceedings

#### *Timing of entry*

Figure 8.2 continues the sequence in Figure 8.1 showing the numbers of children who entered before, at or after the application for care proceedings. The numbers for before differ from those in figure 8.1 because there were 7 children in S1 and 4 in S2, who were known to have entered care before the proceedings but their entry date was not known.

Most children who were looked after *during* the proceedings entered before or immediately care proceedings were started, 38.5% of S1 and 42.9% of S2 were looked after at this point. The rate of entry declined after the first week of proceedings but 27% of children entering care in S1 and 20% in S2 did so later, including 21 children (S1 6, S2 15) who entered only at the Final Hearing. Being in care in figure 8.2 is not synonymous with being subject to an

**Figure 8.2: Entry to care before and during the care proceedings**



(based on children's data: S1 275, S2 321)

interim care order, a substantial proportion of children remained in s.20 care throughout the care proceedings, see figure 8.3, below.

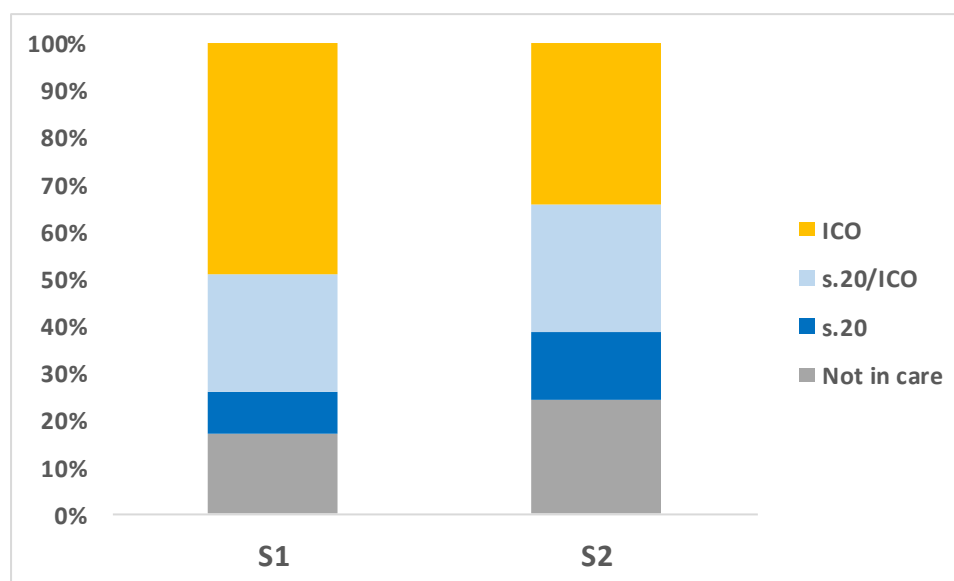
#### *Legal arrangements*

Figure 8.3 shows the legal arrangement for children's care during the proceedings comparing the two samples (based on 595 children). The category 'mixed' (S1 25%, S2 26.9%) comprises children who were subject to ICOs and in s.20 care at different times during the proceedings. Almost all the children in this 'mixed' group were initially accommodated under s.20 pending an ICO hearing where the order was granted. A higher percentage of S1 were subject to ICOs (S1 46.6%, S2 33.4%); conversely there was a higher percentage of children remaining under s.20 in S2 (S1 8.7%, S2 14.4%). The difference between samples is significant, taking account only of these two groups of children ( $X^2= 9.6$ ,  $p<0.002$ ).

The increased use of s.20 had advantages for courts, local authorities and parents. Where the parents and local authority could agree that the child remained under s.20, there was no need for the court to spend time considering the matter; the parents demonstrated their

co-operation with the local authority; there was no order for the local authority to draft just

**Figure 8.3 children's care during the proceedings and its legal basis, samples compared**



(based on children's data: S1 275, S2 321)

a continuation of the existing arrangements; and social workers showed their trust in the parents' co-operation. On occasion, proceedings brought and ICOs sought because of lack of parental co-operation produced an immediate change in the parents' attitude and agreements were made instead:

*'In the Court arena parents are far more co-operative than they were... the kind of negotiations that take place outside Court and what the parents have presented to the Court may have an impact on us not having an ICO but instead making an agreement... but whether that is then sustained through the proceedings is another question. Sometimes we will ask for the case to be listed again for an ICO Hearing.'* LA C LAS

There were differences between the Areas in relation to the use of s.20 or orders in proceedings. In S1, only LAC had more than 15% of children in proceedings subject to s.20 throughout, and LAE and LAF had very few or none; conversely, over two-thirds of the children in the sample from LAE were subject to ICOs throughout, the highest in S1. Overall, more than 80% of the children were in care during the proceedings in each of the Areas except LAD, where just over three-quarters were in care. In S2, the pattern was similar but at least 30% of children in the two London authorities remained under s.20 throughout, a possible reflection of the pressure not to require court time in the very pressed London courts. LAB also had a very low level of 'mixed' cases, under 10% indicating that the local authority continued with s.20 arrangements wherever possible, and the highest proportion of ICO throughout cases, 45%.

Even where local authorities applied for an ICO for a child who was being looked after i.e. already accommodated by the local authority under s.20, an order was sometimes refused:

*'[S]ome courts and some judges are less willing to make orders than others and there is a reliance actually on section 20. Sometimes we go to court for an order and the court is satisfied with a section 20; we can continue our work and we then don't get an order, ...the order is not the ultimate concern of the court, the focus is what is the plan for the child and sometimes it doesn't matter whether it is a court order or not, that is the secondary focus.'*

LA C SWM1

*'I know one social worker came back and she couldn't believe it. Because we all said at Legal Panel, this child was in care under section 20 ...it wasn't right, they should be on an interim care order in care proceedings. And then when it got to court, the judge said, 'No it carries on in section 20.'.... Yes, for using section 20... you are damned if you do and you are damned if you don't.'* LA D SWM4

#### *Applications for ICOs*

Local authorities initially sought an ICO in the majority of cases, but applications were often not pursued if the parents accepted s.20 care. Interviewees emphasised that the need for an order was considered carefully:

*'[W]e don't just ask for interim care orders with no good reason for [an] interim care order.... it has got to be dangerous and we feel that we need to make a concerted effort to make hard decisions...., we are not going to compromise what the child needs but in the Court arena if we can get agreement we will continue with section 20 until assessment [is complete] and we submit [the] final care plan.'* LA C SWM5

Courts adopted two different practices where ICOs were contested; they sometimes made no order but set an early date for a contested hearing, alternatively they granted a short-term order to last until the application could be heard. Children's entry to care more than a week after the start of care proceedings indicates either a gap in listing an ICO hearing, or an application made following an earlier refusal and/ or a deterioration in the child's care:

*'[I]nvariably ...the children have been [removed], ... after three months and a series of incidents .... And I do think that a few years ago the children would have been removed earlier.'* LA E IRO 2

*'If we apply for an ICO we get it, or there have been occasions where we go back to court maybe two weeks later if we have been asked to gather more evidence. So, there have been times where perhaps we haven't had removal at the time, and so then we have to go back for a removal hearing, either more often or not to provide more evidence'.* LA F LAS

The experience of the local authority lawyer in LAF quoted above was not reflected elsewhere:

*'We do have exceptional scrutiny I would say from the courts. We struggle with interim removals... even when we would think in neglect cases it is just not tenable for these children to go on for another six months in that sort of arrangement, and in some of those cases we have tried interim removal and have failed. We have succeeded in some, but the general perception ... is social workers won't get interim removal.'* LA E LAS

Also, in LA D, where the local authority lawyer viewed refusal as part of the local court culture, the court's unwillingness to grant orders encouraged the other parties not to agree and even to contest applications:

*'What we have struggled with, and it is not because of a change in the law, it is because of a change in the way that I think other solicitors and barristers are dealing with things. I think we struggle to get interim removals rather more than we did. I think we are far more likely to face a fight with seeking separation as the courts are incredibly reluctant to make interim care orders.'* LA D LAS

In 116 cases, just under a third of the total sample, ICO applications were contested (S1 27%, S2 34.4%, NS). 36 of these applications (31%) were refused; there was no difference in the refusal rate in the two samples. Refusal resulted in proceedings being withdrawn in one case but only after a series of hearings for orders in an unsuccessful attempt to find and protect the four children, who were taken abroad by their parents and could not be traced.

Although a few contests focused on whether the threshold test was met (this was frequently agreed for an interim order before the proceedings), the majority related to the need for an order or, more specifically, the need for the child to be removed from home. Social work managers in both LAs D and E commented about the *'high threshold'* for getting removal, how *'disheartened'* social workers felt when they had to manage *'just as much risk in proceedings'* as before. The impression social managers and lawyers from these authorities gave was of *'exceptional scrutiny from the courts'* and that *'social workers won't get interim removal'*. (LA E LAS; LA D SWM4)

Removal under an ICO was a major area of conflict between courts and local authorities; courts were more willing to grant orders with children remaining at home but local authorities did not want parental responsibility, which they could not effectively exercise, nor did they consider that they could place a child with parents under the terms of the regulations when they had reasonable grounds, accepted by the court, that the child was at risk of significant harm (s.38, 2010 SI 959):

*'ICO at home is not compatible with the Care Planning and Case Review regs., we don't think it is safe enough, we don't think we can put in sufficient support to make it safe; we will monitor and do all the things that we should be doing, but it would be under a different order, an ISO.'* LA E LAS

The local authority response to the court's refusal to allow removal under an ICO was to withdraw the application and seek only an ISO, as mentioned by the local authority lawyer from LAE. This practice was widespread (there were no cases in the sample where the local authority accepted an ICO with the child at home, although they said they sometimes did so):

*'We know that a lot of the time that the judges won't remove at that interim period, so we do as much as we can before, so we have got the evidence to say why they need to be removed. But one of the things we have found when they won't give that, we will go for ... an Interim Supervision Order.'* LA D SWM4

Local authorities also withdrew ICO applications or courts refused them when care was offered by a relative who was not acceptable to the local authority, either because they refused to be assessed or were considered unsuitable for other reasons. In these circumstances, the court could force the issue by making an ICAO with an ISO so the local authority had to supervise the placement. ICAOs were also made when carers who were accepted by the local authority did not wish to be local authority carers, and towards the end of the proceedings, where children were placed with relatives waiting for an SGO.

Withdrawing the ICO application and seeking only an ISO avoided a contested hearing but it also had implications for the case in the long term.

#### **8.4 Children not looked after during proceedings**

As figure 8.3 makes clear not all children subject to care proceedings were in care during the proceedings. There were 124 children not in care, 20% of the total sample, from 70 families, including some with siblings who were looked after during the proceedings. Children who remained at home when their siblings went into care were: - older and wanted to remain at home; infants whom the court was reluctant to separate from their mothers; or physically unharmed when a sibling had been abused. Conversely, children who were particularly vulnerable because of their age or special needs were removed from home. The children not in care were either at home without an order or with an ISO, including where the court was willing to grant an ICO but not to allow removal as outlined above, or living with relatives under an ICAO or informally. Most of these 124 children were living with a parent at the start of the proceedings but 21% were already with a relative. The proportion of children in proceedings but not in care in S2 was larger than in S1 (S1 17%, S2 24%). This increase is, in part, a consequence of the greater difficulty social work managers and lawyers experienced obtaining interim orders for children's removal in contested cases in S2. Overall, ICOs had been refused for 35 (28%) of the children not in care; in other cases, the local authority had decided not to pursue its application or applied instead for an ISO. What we know about these children comes from their court files, not the administrative data.

The children who were not in care during proceedings were older than those in care; only 9.7% were under the age of 1 year compared with 18% of the children in care and 31.5% were over the age of 10 years, compared with 21.4%. More had been involved in family court proceedings previously, 22.6% compared with 13.8% ( $X^2=5.8$ ,  $p<0.05$ ). This difference was largely accounted for by a higher proportion of disputes between parents. The proportion of previous care proceedings for those not in care was higher, but not significantly so.

There were also some differences between S1 and S2, which were not seen elsewhere in the Study. The average age of children not in care in S2 was significantly older than for those in care, ~ 83 months compared with 60 months for those in care ( $p=0.005$ ). However, this difference was not seen in S1 where the average of both groups was 63 months. Children not in care in S2 also had shorter proceedings than those in care, 24 weeks compared with 27 weeks ( $p=0.01$ ). Proceedings in S1 were also shorter for children not in care but the difference was not statistically significant. Gary's case (S2), below, provides an example.

**Gary 5871**

Gary and his siblings, white British children, had previously been in foster care under care orders because of their parents' very violent relationship. After 3 years in foster care and the apparent end of their parents' relationship they were re-united with their mother and the care orders were discharged. The parents then resumed their relationship and the local authority decided to apply for care orders but agreed with the mother that the children could remain at home pending the final order. There were no further assessments; it took just two months to obtain care orders. The children then returned to their previous foster placement.

There were no assessments in the latest set of care proceedings in this case, because recent assessments were available from the discharge proceedings and there was strong evidence of the parents' relationship and the risks the father posed to Gary and his siblings. In other cases, remaining at home during the proceedings could facilitate assessments:

*'There are more cases where maybe the children are left at home for the duration of proceedings, which isn't necessarily a bad thing, because it is also a very difficult thing once children are removed to do a really good assessment of that family in supervised contact. But certainly, the barrier in which threshold is set is higher.'* LA F SWM2

#### *Orders made for children not in care during the proceedings*

Children's care arrangement, not being in care (remaining at home or living informally with relatives) during the proceedings had a marked impact on the order granted, see Table 8.1, below.

**Table 8.1: Orders made for children not looked after/ looked after during proceedings**

Order	Not LAC N	Not LAC %	LAC N	LAC %	TOTAL N	TOTAL %
CO; CO+PO	20	16.5	280	59.4	300	50.7
SO; SO+CAO/RO to Parent	57	47.1	78	16.6	135	22.8
SO+CAO/RO to non-Parent	9	7.4	13	2.8	21	3.7
SGO; SGO + SO	19	15.7	93	19.7	112	18.9
No Order; W'dn; Dismissed	16	13.2	7	1.5	23	3.9
<b>TOTAL</b>	<b>121</b>	<b>100</b>	<b>471</b>	<b>100</b>	<b>592</b>	<b>100</b>

One social work manager noted:

*'We don't like, as a rule, children on ICOs at home, so most of the time we are asking for ICO with removal. What we get is threshold agreed for an ICO, but not the removal, so therefore*

*we revert to an ISO. So, it's about not having to [contest] which I do think is sensible ...but if the children are at home within proceedings then we tend to not get what we are asking for.'* LA E SWM1

Separate analyses were undertaken for each of the main types of order, grouping all orders with SOs to parents together, separate from SOs to non-parents and from SGOs. A statistically significant relationship was found between the child's status during the proceedings (CLA/ not CLA) and the final order granted for all order types except SGOs, considering S1 and S2 both separately and together. Table 8.2, below, summarises this for both samples together. A weak but statistically significant relationship ( $\chi^2=3.99$ ,  $p<0.05$ ) was found between care status and the granting of SGOs for S2.

**Table 8.2: Effect of not being looked after on order made summary statistics**

<b>Order</b>	<b>Total N</b>	<b>Not CLA N</b>	<b>Not CLA %</b>	<b><math>\chi^2</math></b>	<b>P</b>
<b>CO; CO+PO</b>	300	<b>20</b>	6.7	70.9	<0.001
<b>SO etc</b>	135	<b>57</b>	42.2	51.0	<0.001
<b>SO etc to Non-parent</b>	22	<b>9</b>	40.9	5.9	<0.05
<b>SGO; SGO+SO</b>	112	<b>19</b>	17.0	1.0	NS
<b>No Order etc</b>	23	<b>16</b>	69.6	35.5	<0.001

Children who had not been in care during the proceedings made subject to orders to parents or relatives did not necessarily remain with the same carer. Five children moved to their other parent, nine returned to their parent after staying with relatives and ten moved from one relative carer to another. There were also 21 children from 9 families who entered care at the final hearing when care orders (15) or care and placement orders (6) were made. Some of these children experienced a substantial period of neglectful or risky care during the proceedings; Gary's case (above) 5871 where this arrangement was planned and the period very limited was an exception.

These findings serve to emphasise the importance of decisions made before and early in care proceedings. Remaining at home or moving to relatives may insulate the child from some of the disruption associated with care proceedings but can also mean they continue to live in harmful or risky circumstances until a crisis occurs, and/or experience disruption to their care when the proceedings end. Placement and care after the end of the proceedings are discussed in Chapters 10 and 11.

## **8.5 Conclusions**

This chapter linked data on court proceedings with DfE administrative data to explore the care provided to children before and during their care proceedings, particularly whether and

when they were looked after by the local authority and the legal arrangement for this. It identified, for the first time, two 'hidden populations' of children subject to care proceedings – children who are not looked after in connection with proceedings, and children who remain subject to s.20 agreements throughout the proceedings. These two populations are not visible in the Children Looked After statistics (DfE, annual) because the use of proceedings is not recorded in either the CLA or CiN databases.

The analysis provides an answer to **RQ 4** *What information from children's case files is required for outcomes recorded in administrative data to be meaningfully interpreted?*

Meaningful interpretation of the DfE administrative data requires knowing whether and when children are subject to care proceedings. It is not sufficient to know that the child is subject to an ICO given the substantial (and apparently growing) proportion subject to s.20 during proceedings. Very substantial local authority resources are expended in the protection of individual children through the courts, but the use of proceedings is not recorded in the administrative databases, although less intrusive and less costly interventions such as s.47 assessments and child protection plans are. Recording the use of proceedings would assist in understanding children's progression through successive levels of state intervention and court / local authority interaction. The type of order granted at the end of proceedings is related to the arrangements for care during proceedings. Consequently, reducing the use of care after proceedings depends on changes to the use of care during proceedings, or the use of proceedings.

It also provides a partial answer to **RQ 6** *To what extent do care proceedings under the new PLO result in different processes, plans, orders and outcomes after 12 months from those brought in 2009/10?* One reason for changes in the orders granted was the higher proportion of children who were not looked after during the proceedings in S2. Whilst this was not a direct result of the changes to proceedings, both the pressures on the courts and the increased emphasis on proportionate intervention (*Re B-S* 2013) discouraged contesting ICO applications and encouraged leaving children with parents or placing them with relatives without ICOs. The pressures on the courts were also a major factor in the increased use of s.20 during proceedings.

## Summary

A substantial minority (27.5%) of children were accommodated by the local authority (s.20) *before* the proceedings were issued, with three-quarters of these children becoming looked after less than 4 months before the application. Although the majority of children subject to care proceedings were in care under ICOs, some (S1 8.7%, S2 14.4%) children remained in s.20 arrangements throughout the proceedings; the relationship between use of s.20 and sample was statistically significant. All but one local authority reported difficulties in obtaining ICOs with permission to remove the child from the courts. Where courts refused the ICO or would not allow removal, children were usually made subject to an ISO. As a



consequence, 20% of the sample were not looked after by the local authority during the proceedings; the proportion was larger in S2. Children in S2 who were not looked after were significantly older and their proceedings were shorter than children in care during proceedings. Being in care during proceedings was also correlated with the order made at the end of proceedings. Children at home with a parent or relative during proceedings did not necessarily remain there after the final order: some moved to their other parent or a different relative, a few entered care.

Children not looked after care during proceedings are absent from the DfE administrative databases and those subject to s.20 are hidden because they are not separately identified as subject to proceedings. This does not help local authorities to understand children's progression through the different levels of intervention for protection or the interaction of court and local authority decisions. The use of care proceedings and SOs would be clear if recorded in the CiN database, see sections 14.8 and 14.9 for further discussion.

## Chapter 9: Court orders

### 9.1 Introduction

Court orders are frequently referred to as ‘outcomes’ and of course, in relation to proceedings they are. They mark the end of the process and set the child’s future care in the direction determined in the court. However, court orders are not outcomes for children, but merely incidents which can have a profound effect on their life, or none at all. Orders in care proceedings only identify who has the power to make future decisions about a child’s life, not what those decisions will be or how they will work out. By making its order, the court expresses trust that this arrangement will be in the child’s best interests but must leave to others the decisions and actions to secure this. The child’s best interests are not the only consideration in care proceedings; the courts, applying the ECHR, art 8(2) have held that intervention must be ‘proportionate’ and interpreted that to mean that the most interventionist orders, particularly adoption, cannot be made where the child’s welfare could be served by more limited intervention (*Re B* 2013; *Re B-S* 2013).

Cases are decided ‘on their facts.’ In care proceedings, these facts include the assessments and plans/ proposals made by the local authority, the children’s guardian and any other experts, as well as the evidence of parents and potential relative carers. Decisions are made following a process by which the local authority must establish its case for intervention and for the orders it seeks through adversarial proceedings involving: presentation of evidence; evaluation of the local authority’s assessments and proposals by the children’s guardian; presentation of contrary evidence by the parties, including that of court-appointed experts; and testing evidence by cross-examination and judicial questions. Many cases do not require adjudication but are determined through discussion, and agreement or concession, as outlined in Chapter 4; the local authority, the children’s guardian, the parents and other parties may all modify their views during the proceedings. Whether cases are adjudicated, agreed or conceded, court orders are the product of the interpretation of the facts in the context of law and practice, and predictions about how proposals and any alternatives will protect the child and further their wellbeing. These interpretations and predictions influence the professional assessments and the legal advice given to the parties, including the local authority, and shape the judge’s decision. They, like the resulting court orders, depend on the context in which they are made. This was outlined in Chapter 2.

This chapter places the decisions made in the sample care proceedings in the context of research into court orders. It compares the orders made in the two samples of care proceedings. In relation to S2, it also compares the different pattern of orders made at IRH and Final Hearing. Throughout, it integrates the views of judges and local authority interviewees, both lawyers and social work managers, about judicial decision-making, particularly the factors influencing different patterns of orders found in the two samples, and variations between judges. In doing so, it highlights specific findings and issues relating to the different court orders and the changes observed between the two samples.

### *Variation in the orders made in care proceedings*

Until recently, published data on orders in care proceedings only indicated the numbers of different types of order made each year and not the orders made in relation to specific applications to court. It was not possible, therefore, to say overall what proportion of care proceedings had ended with care orders, nor what orders had been made where care orders were not granted. Research studies (Hunt et al 1999; Masson et al 2008; Cassidy and Davey 2011) provided this information for samples of cases. Hunt et al 1999 and Masson et al 2008 (using 1992 and 2004 data, respectively) found 59% of cases ended with a care order; and Cassidy and Davey (2009 data) found 51% of the children in 'completed' care proceedings were made subject to care orders. The Triborough Study examined the operation of a pilot project to complete care cases in 26 weeks in three London Boroughs in 2012-13. The proportion of care orders and care and placement orders was lower than in the earlier studies and declined from 36% of cases in the pre-pilot year to 28% in the pilot year, and the proportion of SGOs rose from 16% to 24% (Beckett et al 2014).

More recently, a study by Harwin and colleagues used Cafcass data to examine the orders made in care proceedings in England between 2010/11 and 2016/17. They found that the proportion of cases ending in care orders varied by region and over time: nationally between 30% and 35% of children became subject to care orders in their care proceedings with a high of 47% in the North-West in 2016-17 and a low of 25% in London in 2014-15 (Harwin et al 2018: 24). The Ministry of Justice Plato Tool now makes it possible to see what proportion of a specific type of application resulted in a specific type of order for the years 2010 to 2016 (MoJ 2018d). This includes Wales and also provides rather different findings from Harwin et al showing 34.4% of applications for care, care and supervision, and supervision orders, with or without special guardianship resulted in care orders in London in 2014, an average for England and Wales of 54.3% for the whole period, and the highest proportion of care orders made on these applications being in Wales in 2016. The reason for the difference in findings appears to be Harwin and colleagues' treatment of placement orders, which they record as a separate outcome in care proceedings for between 15% and 25% of children (in figure 15). However, placement orders can only be made in care proceedings where the conditions for a care order are satisfied (Adoption and Children Act 2002, s.19) and courts routinely make a care order as well. There are advantages (in research terms) in distinguishing between the two types of order, because these orders are likely to have very different consequences for the children and it makes the decline in placement orders clearer, but aggregating them gives a more accurate indication of the total percentage of cases ending in a care order.

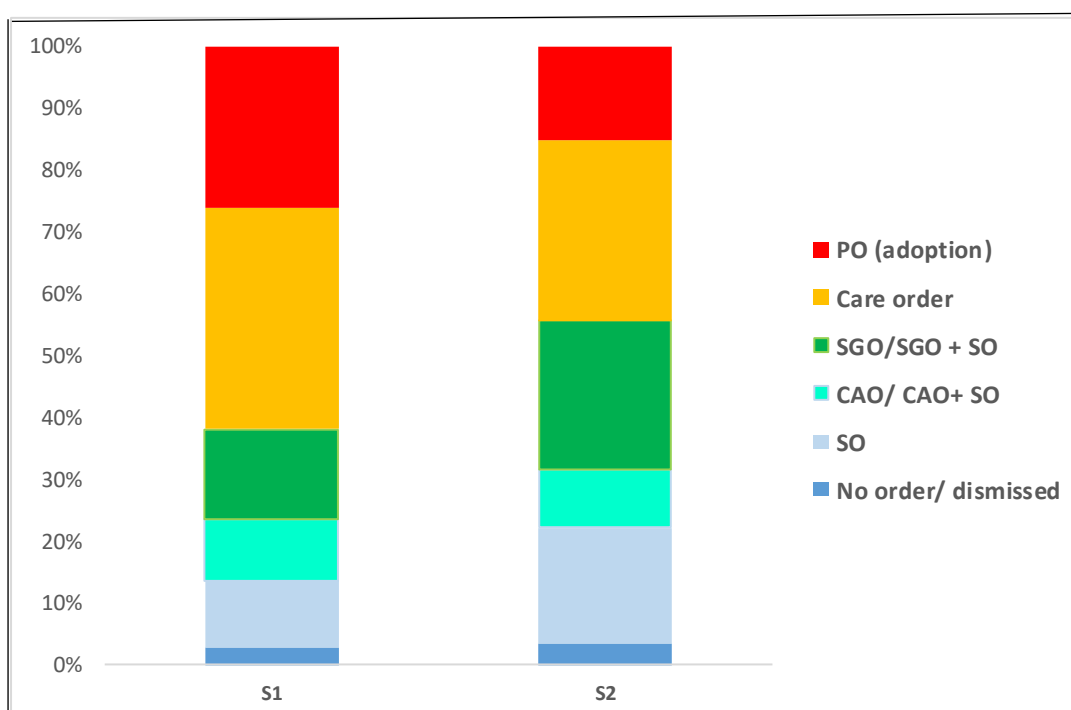
Harwin and colleagues found greater similarities between regions and court circuits for other types of order made in care proceedings (chiefly special guardianship, child arrangements and placement orders). Examining the extent to which the proportion of care orders made differed from the national average, they found that half the DFJ Areas departed significantly from the national trend but that findings for London and the North-West echoed those at circuit level (Harwin et al 2018: 28). They were not able to examine the factual background of the cases but noted that, in the North-West, there was more use

of care orders with children placed at home. They suggested that, ‘The consistent differences over time in the use of supervision orders and care orders may have more to do with professional cultures than other factors such as service availability’ but could not draw such conclusions (Harwin et al 2018: 30).

## 9.2 Orders made in care proceedings in the Study

Figure 9.1 compares the two (random) samples, by showing the percentage of children in each subject to the different orders. The figures are provided in Table 9.1, below. There were very substantial differences in three types of order made in the two samples. More interventionist (higher tariff) orders reduced in favour of less interventionist (lower tariff) orders: Placement Orders reduced from 29.7% of the sample to 15.1%; Special Guardianship Orders (with or without Supervision Orders) increased from 12.6% of the sample to 24%; and Supervision Orders increased from 11.5% to 19.7%. There was much less difference between S1 and S2 in the proportion of care orders (without placement orders): 30.8% and 28.6%, negligible difference between the overall proportion of Child Arrangement Orders (for living with) 11.1% and 9.2% and in the proportions of orders dismissed or ending with no order, 2.8% and 3.4%, respectively. Overall, there was a shift away from approving plans for adoption and making Placement Orders towards granting Special Guardianship Orders, so children were brought up by a member of their extended family, and also in favour of children remaining with, or returning to, their parents subject to local authority supervision.

**Figure 9.1: Court Orders (children) S1 and S2 compared**

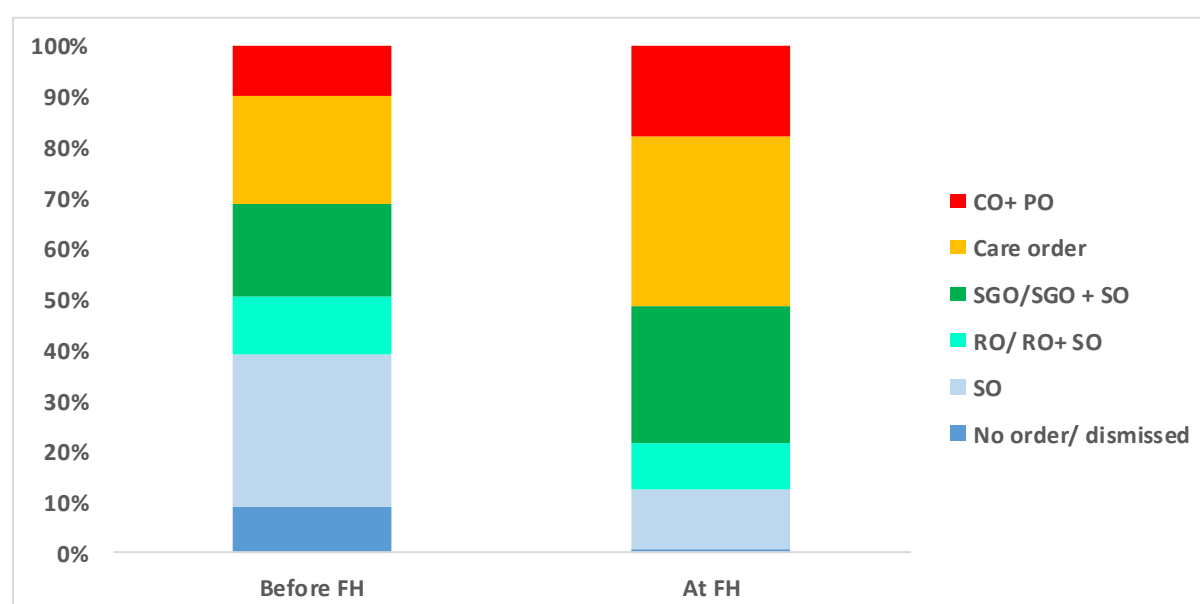


All types of order were made at IRHs indicating that the order sought did not necessarily prevent the case being concluded without a Final Hearing, see figure 9.2. Overall, 117 (36%) of children’s cases were concluded at an IRH; the figures for each type of order are given in Table 9.1, below. A larger proportion of Supervision Orders (60.3%) and Child Arrangements

Orders (with or without Supervision Orders) (43.3%) were made at the IRH stage than at the Final Hearing whereas a smaller proportion of Care and Placement Orders (22.4%), Care Orders (25.8%) and Special Guardianship Orders (26.9%) were made at an IRH. The frequency with which Supervision Orders were made at IRH reflects both the acceptance by all parties of the need for an order where the local authority has established the threshold condition in care proceedings and of an early end to proceedings where this least interventionist order will be made. Area F, where the lowest proportion of cases ended at the IRH (10%) also had the lowest percentage of Supervision Orders (11%).

All but 1 of the cases ending without an order also ended at the IRH.

**Figure 9.2: Court orders (children) made at IRH and Final Hearing (S2 only)**



**Table 9.1: Orders made - numbers and proportions S1 S2, and at IRH and FH**

	S1		S2		Total
Order	N	%	N	%	N
PO	85	29.7%	49	15.1%	134
CO	88	30.8%	93	28.6%	181
SO	33	11.5%	64	19.7%	97
CAO etc to P	19	6.6%	19	5.8%	38
CAO etc to non P	13	4.5%	11	3.4%	24
SGO	36	12.6%	78	24.0%	114
wdn, dis, no order	12	4.2%	11	3.4%	23
TOTAL	286	100.0%	325	100.0%	611

S2 only			
IRH		FH	
N	%	N	%
11	9.4%	38	18.4%
24	20.5%	69	33.3%
38	32.5%	25	12.1%
7	6.0%	12	5.8%
6	5.1%	5	2.4%
21	17.9%	57	27.5%
10	8.5%	1	0.5%
117	100.0%	207	100.0%

### Contested cases

There is no objective way to identify from case files whether and to what extent a care case with a Final Hearing has been actively contested. Judges allow parents to hear and test evidence even though they do not actively put an alternative case. To take account of this, the length of the Final Hearing was used as a proxy for contest, examining cases lasting two

more days and three or more days. Overall, very slightly more S2 cases had hearings lasting two or more days, 37.9% compared with 33.8%, but there was no difference between the samples in the proportion of cases lasting 3 days or more (17.5%). There was some difference between the samples if only cases ending in care and placement orders were considered: whereas only 18.5% of such cases lasted 3 days or more in S1, 27.5% did so in S2, suggesting an increase in contest (or scrutiny) where the local authority obtained a higher tariff order. However, the relationship between contest and sample for these cases did not reach statistical significance ( $p=0.058$ ).

Where the local authority's final care plan was fostering or adoption, care or placement orders were made in 98.7% of S1 cases and 92% of S2 cases. These figures indicate that courts usually made orders that corresponded with the care plan but did so in a slightly lower proportion of S2 cases. It also suggests that S2 care plans were less in keeping with the court's approach or that local authorities were less willing to make changes to fit with this.

*'[T]here were situations where the Judges were wanting us to change our Care Plans, now particularly following Re B-S ...where we certainly felt pressured to change our Care Planning away from Adoption even though we might have thought that it was the best outcome, would be the best outcome.'* LA B SWM4

### **9.3 Making court orders**

Both judges and social work managers felt the pressure of making decisions in care cases which could be life-changing for children. The PLO timescale had added to this pressure:

*'Well, that's it, the enormity of the decision-making. They're talking here now about resources, time pressure, and ultimately a decision has to be made – all these things factor into it, and you're going to have to make that decision ... the judge has got to make a decision with what's in front of him and in a timescale that Parliament says he has to conclude it within.'* FG1 E

*'I think the Judges are trying to do their best in very difficult circumstances themselves and they are very tight, making some very big decisions about where children should live with limited amount of information because it is all so quick and I think they do pretty well considering... they struggle with the timescale and so they are in the same position as us really, how do you make those very big decisions in such a short length of time?'* LAB SWM6

#### *Factors influencing the orders made*

Two major factors distinguished the legal context for the two samples: the operation of the PLO 2014, particularly the 26 week timetable, see Chapter 7, above, and the case law, specifically the decisions in *Re B* (2013) and *Re B-S* (2013), see Chapter 2, above. Both were referred to by focus group members and interviewees amongst the factors which influenced court orders. Whilst Judges saw these matters as distinct, they also made links, as did social work managers, between the timescale for orders, the reported cases and the orders made. Although one judge in FG2 discounted the idea that the PLO had resulted in changes to the orders made, their example indicated how time pressure led to considering or making Care Orders rather than SGOs or SOs. This was echoed in the concern of the LA E manager

(quoted below) that courts made lower tariff orders, which could fail and reduce the options for permanency:

*'We have a lot of discussion with the LAs....and there's a lot of constructive discussion about both what's going on and the reasons for it. And they've all found an increase in the number of SGOs and a reduction in POs, and a lot of this has got to go back to Re B-S, the effect that Re B-S has had on the law and the perception of the law. But also, it's a genuine attempt to encourage family placements with all the intended consequences. So, it's not the PLO that's done this. It's the Court of Appeal.'* FG2 F

*'I don't think the PLO's changed that. I think the PLO means that I make more COs because [the plan is] perhaps still in some transition or something. They've got a choate care plan for you to approve but it's not been tested ... Before you might have said, okay, place and let's leave it for 3 months and make sure everything's tickety boo, and then you could sign it off in SGO or SO. But if it's really early days, you're far more likely to make a CO on the basis of there being a discharge and a separate order being made. But Re B-S has put the kibosh on that, placements, threw a complete spanner in the works, nothing to do with the PLO.'* FG1 G

*'I worry that with some of the difficult cases, it then leads courts to make a decision that maybe still leaves children in limbo. So, it might be the local authority saying, 'Care Order and Placement Order' and the courts will say, 'Supervision Order at home.' If it then goes wrong ... the local authority go to court and that child then goes from being two years old to being five years old and the chances of permanency and adoption have plummeted. I wonder .... whether we get those complex cases right for children and whether we have produced [unworkable] timescales.'* LA E SWM2

The impact of *Re B-S* pervaded the local authorities, not only because they were on the receiving end of decisions made by the courts but because of the advice given by local authority lawyers; the increased emphasis on identifying and assessing relative carers; the need to ensure care plans considered all realistic options and weighed their pros and cons; and the decisions taken by the local authority ADM.

*'I think that everything is influenced by other parts, all parts are influenced by each other. So, clearly if a local authority legal team has very good experience of the judges who are sitting in [locality], they are going to be influenced...., because that is inevitably what happens I think. And then they obviously have a response to convey that information to the local authority social workers, which inevitably influences [them].'* LA E IRO2

#### *The impact of Re B-S*

*'The President's mantra and nothing else will do. There is no two ways about it - that has filtered right across the whole of Child Protection and it has been interpreted, as 'everything else must be tried.'* LA E LAS

*There is far more emphasis on demonstrating why your plan for permanency is the right one and you have really evidenced that and again rightly so, we should be doing that. But yes, that has definitely made a big difference.* LA F SWM2

*Re B-S* had 'shifted the court's focus' (LA A LAS), 'made it much tighter' (LA C LAS1), 'almost overnight' (FG1) led to a 'philosophical [view] that family are better' (LA C IRO3). Adoption became 'unfashionable' (LA B SWM3) and children's guardians and judges became 'anxious' about recommending or ordering it (LA B SWM5). The requirement to prepare a 'balance sheet', setting the placement options for the child was seen as 'really helpful' (LA D SWM1) but was also said by many interviewees to involve more work - not only explaining the decision and how it had been reached but exploring options in more depth.

Local authority interviewees, both lawyers and social work managers, accepted that it was right to try to keep children within their families and that potential relative placements should be explored. They felt that social workers should have to evidence that plans for permanency were the right ones. However, they were critical of 'pressure' from the court to change care plans away from adoption (LA B SWM4) and of the court's approach which had led to some poor decisions. Managers in LA B particularly thought that the court privileged the child's short-term needs whilst the local authority took a longer-term perspective.

#### *Presentation of the local authority's case to the court*

The shift in focus away from adoption and in favour of children remaining with their parents or being placed in their wider family re-emphasised the approach which local authorities supported but raised the bar, not just in terms of the evidence required but also the circumstances where courts considered parents or relatives able to care. The local judge's expectations strongly influenced the way the local authority prepared and presented its case:

*'So, judge has been here since [year] and has very much set the scene on what is expected. I think it is a case of the local authorities getting used to the senior judges in the area. So [the judge] does set high expectations, but I think the social workers and team managers now understand that and it is used as a yardstick now. So if [judge name] thinks that is acceptable, then it is acceptable and if [judge] doesn't think it is acceptable, then we need to do something about it.'* LA F IRO

There was more scrutiny within local authorities to ensure compliance with the PLO, to meet the requirements of *Re B-S* and to satisfy the expectations of the local court:

*'[O]ur court statements and everything are scrutinised by Legal before they go in. We're constantly looking at the analysis to make sure it's strong enough and our chronology is strong.'* LA E SWM4

Plans for adoption which would previously have been supported might not be approved. Consequently, social workers had to do more - provide more and better evidence, showing that parents or relatives could not care even if they had extra support in order for the court to make a placement order. This was not just about the quality of their assessments it was also about their skill in giving evidence and the way the local authority's lawyer presented the case:



*'I think there are issues with our own Legal Service ...sometimes the advice they give us is the path of least resistance and I think it is about us actually being much stronger about understanding our care plan and having that dialogue with our Legal [Department] to say we are instructing you. So, it's about having a good robust legal system here so that we feel confident in challenging in court to say, "this is what we believe is the right thing". I think ... the other area actually that we do need to improve on is actually giving evidence in court, ...some people are very good at giving evidence, there are other people who are just not very competent at it and of course a lot of it hangs in the balance in terms of knowing your case and being able to really be accountable for that in court and not be bullied by everybody else, which is what they do...'* LA C SWM3

#### *Variations between Areas*

Adversarial proceedings are intended to test evidence and challenge proposals to achieve decisions according to the law even when agreed orders are made. Justice and fairness require consistency in the way cases are treated and the orders made. However, in a system involving judgment, whether collective or individual, variation is inevitable both in local authority and court decision-making. Judges, lawyers and local authority managers accepted that court practice varied, and that this could impact the way cases were managed in the court and the orders made:

*'Courts tend to have a similar view but there are some judges – it happens. All of us have been advocates – we know what judges are likely to give you a chance, and what judges are not likely to give you a chance, even on the same evidence. I'm sorry but that's the reality.'* FG2 H

*'[What] one hears is, 'Oh I am worried because it is before that particular judge'... but one would think you are going to have different people with different emphasis presumably. I mean some people are going to [be] more pro reunification, some people are going to be more ....'* LA E IRO2

*'I think that depends on the Judge! I think it does depend on the Judge that you are in front of because they can expect different things which isn't always helpful, and I think they can change the goalposts slightly each time you are presenting there, which isn't always helpful. I think it all depends - the majority of them are fine.'* LA F SWM5

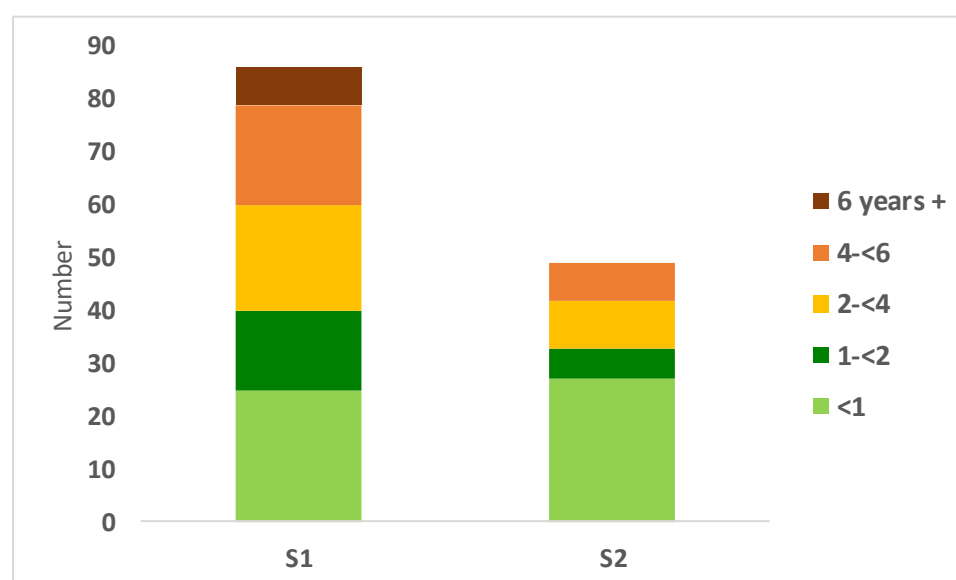
Different judicial approaches could be minimised through discussions between judges, which some Focus Group members referred to as common in their court. Courts in most DFJ Areas heard applications from a number of local authorities, whose senior managers and lawyers also met together on the Local Family Justice Board, allowing some comparisons of their approaches. The researchers are not able to assess how far differences in decisions between cases were reduced but can demonstrate how decisions differed over time and between Areas. Differences between Areas reflect interactions between local authorities and courts within the adversarial system and are not simply the responsibility of courts or local authorities, but individual judges could influence the system whilst individual social workers could, at most, influence an individual case.

## 9.4 The differences in the orders made between Samples and Areas

### *Placement Orders*

Figure 9.1 shows that a much smaller proportion of children in S2 became the subject of Placement Orders than did so in S1. The courts made 85 Placement Orders in S1 cases and 49 in S2 cases. There were also changes in the ages of children subject to placement orders, in part due to the shorter duration of proceedings but also because other orders were made for older infants, see figure 9.3. Whereas more than half the children subject to Placement Orders in S2 were under the age of 1 year, this was the case for only just over a quarter of those in S1. Similar proportions of children were aged 2 to 4 years but almost a third of S1 children with Placement Orders were over 4 years compared with fewer than a sixth of S2 children. In this sample at least, adoption had largely become a placement for infants; only a third of the S2 children with Placement Orders were two years old or older.

**Figure 9.3: Children's age at Placement Order S1, S2\***



\*Data suppressed for small numbers in S2; all children over 4 shown in 4-6 age group.

### *Care orders*

There was little difference between the children in each sample subject to Care Orders but the mean age of those in S2 was 6 months younger than for S1, again reflecting the quicker proceedings. Only 5% of these children were under the age of 5 years, 2 from S1 and 7 from S2. Most of these young children subject to Care Orders were placed with relatives, with the order being used to support relatives also caring for older siblings, for children placed with relatives overseas or where a SGO was planned. There were only three children under the age of 5 years in stranger foster care and each was placed with an older sibling. Five of the young S2 children subject to Care Orders came from Area E, and there were none from 3 of the other Areas. A LA solicitor from LA E explained:

*'[W]here you are assessing somebody [as a kin carer] and it looks as though the transition can be made swiftly then we might have this extension under the existing proceedings to implement that plan. In those cases where you are not quite at that point, or there are more reservations, but it is looking relatively positive, then a care order might be made with a view to a special guardianship in perhaps 18 months.'* LA E LAS

Interviews in other local authorities indicated that they also supported this approach for some carers.

However, kin carers had to be willing to be local authority foster parents and be approved as carers. Regulation 24 (2010 SI 959; 2015 SI 1818, reg 26 for Wales) allows more limited assessment and approval process for short term carers, but full approval was required for kin providing permanent care. Two social work managers identified the perversity of a system which provided more support for kin who are assessed as better able to care:

*'[R]eally good potential SGO carers become Kinship Foster Carers because they can meet the fostering regs. So you have got this mad system whereas families that are already a bit more superior, they become Kinship Foster Carers so they have a Fostering Support Worker, the child has LAC Reviews and a Social Worker, have all the support. The SGO [carers] are usually ... they are families whereby they wouldn't meet fostering standards so already that tells you something, and then we say, "Bye, get on with it!"'* LA D SWM6+7.

Whilst this view reflects the greater availability of support to kinship foster carers, which can be very important at the early stages of the placement, a key aim of the SGO is to normalise the child's life, so that the carers have PR and the child and carers do not have the intrusion of the local authority's continued involvement.

### *Special Guardianship Orders*

Figure 9.1 shows the change in the proportion of children ending care proceedings with SGOs in the two samples. Reflecting the greater emphasis on placement with kin following *Re B-S*, more S2 children were made subject to SGOs; cases ended with SGOs for 36 S1 children (12.6%) compared with 78 (24.3%) S2 children. The local authority had actively proposed adoption for 7 of the S2 children, changing its plan to support the SGO only during the proceedings, in one case part way through the final hearing.

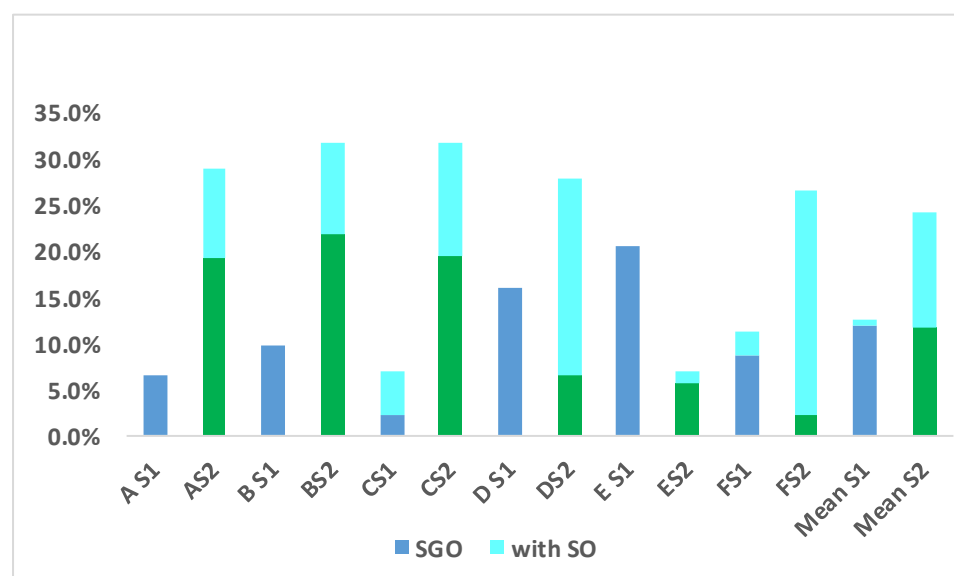
SGOs were also more likely to be made with a Supervision Order in S2. The proportion of cases ending with SGOs was higher in S2 in all but one Area. In Area E, concerns about the use of SGOs had been raised following a Serious Case Review; it appears that this discouraged such arrangements and also resulted in more placements with relatives initially being made under Care Orders, see above. There was also variation between Areas in the use of SOs with SGOs. Overall, half of the S2 SGOs were made with SOs; in Area F this was the case for all but one SGO, whereas in Area E only one S2 SGO was made with a SO, see Figure 9.4.

Various factors appeared to encourage the addition of SOs to SGOs in S2. As discussed in Chapter 7, SGOs were often made in favour of relatives who were not well-known to the child and after short periods of assessment; a third of children subject to SGOs had not lived

with their relative carer before the order was made, see figure 7.6. In such circumstances, some judges wanted to ensure that the local authority would oversee the placement and so added a Supervision Order. Supervision Orders were also added to support relative carers to manage contact and sometimes where there were more general concerns about the arrangement. Harwin et al (2019a) found relatively few differences between cases with SGOs alone and those with a SO as well: SGO only carers were less likely to be white; less likely to be caring for children who had lived with parent(s) with mental health problems; more likely to be caring for children whose parents had not engaged with services; and it was less likely that a FGC had been held. The addition of a SO to a SGO did not necessarily secure additional support; two-thirds of carers with only a SGO had an allocated social worker. They also found differences between the local authorities and concluded that ‘local authority and court culture’ have a role in the use of these orders together (Harwin et al 2019a: 88 and table 5.11).

The issue of support for kin carers is discussed below in Chapter 12 and section 14.5.

**Figure 9.4: SGOs with/without SOs by Area and Sample**



It was unclear from our study whether the use of SOs with SGOs was driven by judges, Children’s Guardians, parents or special guardians, who wanted to ensure the local authority continued to have some involvement, or from within the local authority or by a combination of these. Local authorities recognised the need for kin carers to be supported and expected to prepare support plans or written agreements with special guardians. Negative views of the use of Supervision Orders with SGOs were common with both social work managers and lawyers stating that this was ‘*contradictory*’ (LA D SWM7; LA E LAS) because a placement which required a supervision order was not good enough for the child:

*‘[If] you actually do need that social work intervention to that degree [a SO], I would question why the [SGO] had been made.’* LA A SWM1

Adding a SO was seen as a reflection of lack of trust from the court or the children's guardian that the local authority would continue to provide services:

*'[T]he local authority perceives it to be the court and the guardian not believing the local authority will continue looking after this child with the Special Guardianship Order, that they will be pushed to one side and never discussed again. But the Supervision Order only lasts a year. ...if you are putting [children] with Special Guardians, .... then it is a bit of a false economy really, not to look after that order, because the children [will come] back into the care system....'* LA F LAS

However, this local authority lawyer thought that services were more secure while there was a SO because of the local authority's duty under the order and the vulnerability of non-statutory services to cuts given the pressures on the local authority:

*'The Service Manager has to think about his resources, I think though, that the feeling is that perhaps.... Well [children's services] would say they don't get a better service with a Supervision Order, but they do, because it is statutory.'* LA F LAS

*'[U]nfortunately, the way that things are at present if there isn't a legal onus on the Local Authority to do something, they won't do it.'* LA D IRO 2

A lawyer in another local authority noted that if there were a SO, the child had 'a named social worker', rather than just access to a carer support service (LA B LAS). However, in LA D, pressure on resources meant that the local authority had stopped seeking SOs in SGO cases and they were rarely made in 2017.

Whilst children made subject to SGOs in care proceedings were treated by all of the local authorities in the Study as 'in need' the oversight of these cases was more limited than for children with Supervision Orders, who were visited every 4 weeks and had had their case reviewed after 9 months to see if the SO should be extended. Each local authority had a team with responsibility for providing social work support after the SGO had been made but the resources available and the number of carers who could need support varied markedly. Local authority managers also identified other circumstances where the addition of a Supervision Order might be supported: where children had not lived with the carer before the order was made (LA B SWM1); so carers could tell parents that contact arrangements were decided by the local authority (LA A LAS); where the local authority did not support a SGO but could not present a strong enough case against it (LA C SWM3); or where there was concern about pressure from the parents on the special guardians (LA F IRO).

As in the case of Placement Orders, a higher proportion of children subject to SGOs in S2 were under the age of 1 year (25.6% compared with 8.3%) but a higher proportion of S1 was aged under 5 years (69.4% compared with 60.2%). Similar proportions were aged 5-9 years but there was a higher proportion of S2 children aged 10-14 years (15.4% compared with 5.6%).

In interview, local authority lawyers and social work managers expressed considerable concern about SGO breakdowns, in part because of the pressure to complete assessments

quickly and the increased number of orders granted by the courts. Better assessment and improved support were recognised as ways of preventing this but limits on time and resources made these hard to achieve.

#### *Child Arrangements Orders (formerly known as Residence Orders)*

Child Arrangements Orders setting the child's living arrangements (S2) and Residence Orders (S1), with or without Supervision Orders, were made for a total of 64 children; they accounted for 11.2% of S1 orders and 9.4% of S2 orders. All but 12 of these orders were made in favour of parents. There were clear reasons why CAOs were made rather than SGOs in some of these cases: one child who was going abroad with the carer, a CAO but not an SGO would be recognised in that country; a teenage child did not want a SGO even though the carer had a SGO for their younger sibling; and in a third case the carers were also looking after the child's mother.

Supervision Orders were added for two-thirds of children. In some cases, it appeared that the primary order was the Supervision Order, but a CAO was added because the carer, the father did not have parental responsibility; in others, concerns about the carer had resulted in a SO being made. In many, but not all of the cases without SOs, the child had moved to a 'safe parent'; making only a CAO effectively left that parent free from (or without the support of) the local authority. In these cases, unlike SGOs, the local authority had no duties to assess the carers support needs.

#### *Supervision Orders (made without any other order)*

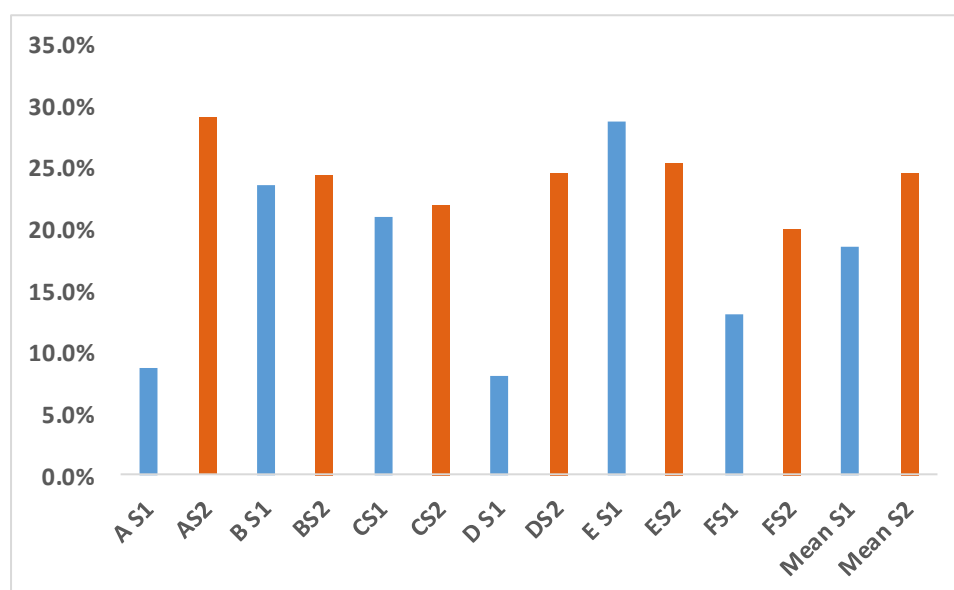
Substantially more Supervision Orders were made in S2 than S1. Orders were made for 11.9% of S1 children (34) compared with 18.7% of S2 children (60). These figures rise to 17.8% and 24.9% if SOs made with CAOs to parents are included. Nationally, almost 20% of care proceedings resulted in Supervision Orders in 2010-2016, with an increasing proportion year on year and a higher proportion in London (35% in 2016) and the lowest proportion in Wales (under 10% in 2016). The PLATO tool does not show Supervision Orders made with CAOs (MoJ 2018d).

Figure 9.5, below, shows the variation in SOs between the two samples and for the 6 Study Areas and includes CAOs to parents where SOs were also made.

There was an increase in the use of SOs in all Areas in S2, the most substantial was in Area A, where no children in S1 had only SOs and under 10% of orders were CAOs with SOs compared with almost 30% in S2. Whilst individual case factors, including the responses of parents, inevitably play a part in determining which orders are made, the overall similarity of the two samples suggests that changes in policy and practice, implemented in and through local culture are a major driver. *Re B-S* may also have contributed to this change; if there were no suitable relatives and adoption was considered disproportionate, very young children were returned home with supervision orders. There were 10 children in S2 for whom the court made SOs where local authorities sought Care and Placement Orders, including one case where the decision was overturned on appeal. No Care Orders with placement at home were made for children in either sample; the local authorities were

unwilling to accept such orders because they could not exercise the parental responsibility imposed on them.

**Figure 9.5: Supervision Orders by Sample and Area, including CAOs to parents with SOs**



Where children were not in care during the proceedings, a SO or CAO/RO with SO were the most likely orders to be granted, with at least half of these children ending the proceedings with such orders, see table 8.1, above. In S1, a Residence Order with a Supervision Order was the most common order for children not in care (31.6%); in S2, Supervision Orders alone were more common, with almost 55% of children not in care ending proceedings with them. For almost a third of children on SOs, the order resulted in a change of placement at the end of the proceedings, most returning to parents after a period in foster care or with relatives, but two children moved to their other parent without any CAO being made. Another 16 children, just over a third of those with a CAO and SO, also moved to their other parent with the making of the order.

There was no obvious link between the general views expressed by interviewees and the proportion of children whose proceedings ended with a SO, which necessarily reflected not only the local authority view but that of the children's guardian and the court. There was a range of views about the utility of bringing care proceedings if the result was a SO and repeated reference to cases which had returned to court after the failure of these orders, see Chapter 10. From a positive perspective, Supervision Orders *'gave hope'* (LA A SWM2); they recognised the efforts made by parents during the proceedings, that a Care Order was no longer necessary (LA A SWM4) and indicated the support the local authority would continue to give (LA A SWM3, LA E IRO1). Some saw the use of proceedings as the instrument of change:

*'[T]hey [parents] could have been on the child protection plan 18 months to two years with no change. But then within the court arena the parents really see that we're not messing about, we are really worried, and we want you to take stock of what it is we are asking you to do.'* LA A SWM3

*'[I]t [the SO] can have effected change within the family, and state intervention is huge for families and if they have gone through that process and they have had all that anxiety about their children, then I think that can be a cathartic underpinning of some change.'* LA E LAS

The contrasting view, that there was no point in bringing care proceedings if a Supervision Order was inevitable, was also expressed:

*'Well I don't see the point, I don't.... The supervision order simply says to the parents that the local authority have got a duty to advise, assist and befriend you. It doesn't say as a parent that you have got to engage with it, so it is meaningless. So what's the point? It is a safety thing to make everyone feel happy.'* LA D SWM4

*'I think now, if ...the only outcome of going into proceedings is a Supervision Order, they [the local authority] are so reluctant to issue.'* LA B LAS

And some scepticism was expressed about the effectiveness of SOs to achieve change:

*'[The case ended with] a Child Arrangements Order for her, so it was clear where the child lived but also a Supervision Order. And I think that did just give her the message that actually although she was gaining care of this child we were still concerned and that she needed to, you know she needed ongoing support.... I do still think there are [some successes] but we do get some Supervision Orders, the families do go "Two fingers up to you".'* LA B SWM1

*'So, you have a mum and dad who separate, they are never going to get back together again and in the 26 weeks pre-proceedings you end up in court.... Say you end up in court within 26 weeks they have held it together and pretending to everybody they are not back together, you get a supervision order afterwards to support mum then during that supervision order process, of course he is back on the scene.... So, you would have to trigger Child protection and you would start it all again.'* LA D SWM4

However, a strong case was made for Supervision Orders as vehicles for developing robust plans to work with families to achieve change because there was *'accountability to the court'* (LA E IRO1). The work required substantial resources to be effective and family co-operation could not be assumed. The interviewees who were positive about Supervision Orders also spoke of the demands they made, whilst those who were more negative assumed that such efforts had been made at the pre-proceedings stage to no avail, that the order was the *'inevitable'* result of the court refusing to remove the child from the home during the proceedings (LA B LAS) or that resources that might have made the order effective were not available (LA E LAS).

Timescales were seen as a factor both in bringing proceedings and in their ending with a SO. Internal pressure not to keep children on child protection plans for prolonged periods, particularly over 18 months, contributed to the use of care proceedings for children seen to be at significant risk through neglect and domestic violence. Also, 26 week proceedings were viewed by some as too short for local authorities to be convinced that changes made during the proceedings would be maintained:



*'[S]ometimes it wouldn't be enough time to assess change with that family in that period of time. ... I think for us it would be, if it is already going into the court, that would be around helping to do a piece of work with the family around what changes they could make and that then it could be [after the proceedings] – because then they get the order and we continue to be involved for example [in cases with] no order. Um, so I am thinking more of the rehab cases really and how that then fits with that family in relation to that 26 weeks.'* LA F SWM1

*'I think Supervision Orders, the ones we tend to suggest are just only in agreement with the guardians and that basically the parents throughout the timescale have actually made significant changes and whatever needed to be tested has been tested. And by the time we come to the final hearing actually the threshold for a protective order like a Care Order isn't as strong as perhaps it was in the initial stages at the beginning of proceedings.'* LA A SWM4

That said, before the PLO, where the threshold had been proved, cases only rarely ended without an order.

## **9.5 Contact orders and arrangements**

Local authorities have a duty to endeavour to promote contact between children it is looking after and their parents, relatives and friends (Children Act 1989, Sched 2, para 15(1); DfE 2014; Welsh Government 2014; DfE 2015b, paras 2.78 et seq.; Welsh Government 2015). When making a care order, the court must consider the arrangements for contact and invite the parties to comment on these and can make orders that set out the contact to be provided or terminate it (s.34). Where care proceedings end without a care order, the court can make s.8 orders for contact. Within separated families, contact disputes are the most common issue brought to family courts (MoJ 2018a); most applications are by fathers seeking contact, grandparents rarely apply (Harding and Newnham 2015).

In private law cases, courts endeavour to promote contact between parents and routinely make s.8 orders (Hunt and Macleod 2008; Harding and Newnham 2015) but the approach where care orders are granted is markedly different, with few orders made except to restrict contact. The Family Justice Review Final Report stated:

Clearly the court should have jurisdiction over contact issues. We propose no change to its powers under section 34.... Parents would retain the right to apply to the court for a contact order. But we should expect section 34 to be used only by exception and the courts should not encourage section 34 applications as a matter of routine. Contact arrangements are complicated. To work best they often need to be flexible and capable of regular review. Court is not the best place for these to be resolved. Direct dialogue between the local authority and the family is usually better. For these reasons we do not think it appropriate or helpful to have the court routinely scrutinise these issues in detail when it makes a care order. (FJR 2011b: paras 3.40-41)

This reflected practice in the Study courts both before (S1) and after the Review (S2). The Study courts appeared to accept that arrangements for contact necessarily vary over the course of the child's life in care, and that the local authority would arrange contact in children's best interests. This did not mean that the courts exerted no influence over

contact during or after care proceedings; courts set (and reflected) practitioners' expectations for contact arrangements, including frequency, and provided a means of challenge where local authority proposals were markedly different from these or not adequately explained. Final care plans set out the arrangements for contact which might be amended in response to the views of the children's guardian or the parties, or cross-examination of the social worker (Pearce et al 2011). Arrangements were rarely confirmed in an order except one giving the local authority the power to end contact. Judges wanted specific contact plans and made their views on contact known:

*'[T]hey [judges] want to know [about contact plans] and the judges are not slow in coming forward about their own recommendations in terms of contact, which may often be recorded as a recital that is taken on board. But orders themselves are quite unusual.'* LA E LAS

*'What they [judges] need to be a bit clearer about is that the families focus on these little tiny gems of the word. What they hear when the judge says "It [contact] is up to the local authority, but it may be in the future that an increased level of contact can be considered", what the family hear is, "You will get more contact." And we now spend a lot of time dealing with that issue because [the mother] constantly comes back to social workers, to me, to everybody else about the judge saying she was going to get more contact. No, he didn't, [he just made] general statements. And it is about the judiciary needing to think through the impact of what they are doing. They want to be nice, so they give a little thought to the family and actually all that does is create unrest for the child and just a whole pile of work. And that doesn't help the parents, because they just go through that whole disappointment again.'* LA C IRO1

There were only 6 cases (3.3%) where a contact order was made with a CO or CO and PO, only two of these were in S2 cases.

Orders for contact were made more frequently where children were to be cared for by a parent or relative. Overall, contact orders were made in 16.9% of cases; over half (54.3%) of cases with a RO or CAO and more than a third (35.4%) of cases ending with SGO also had a contact order.

Even though they were dealing with care proceedings, the courts appeared to treat cases ending with a CAO/RO like private law cases, where contact with the non-residential parent is the norm and is refused only exceptionally. Contact orders were made in favour of over half the parents who were not caring physically for their children, with little acknowledgment of the risks this parent posed to the child and the additional demands frequent contact might impose on the parent with care. Where the court made only a Supervision Order there was less use of Contact Orders (14.5% of cases) because fathers did not seek contact, or more rarely, because the parents were living together.

SGOs provide a status, which can be likened to adoption but does not completely remove all recognition for parents. There appeared to be no agreed view whether special guardians should be able to decide, as adopters can, who has contact with the child, or be treated like

parents with care and ordered to provide contact. As discussed above, Supervision Orders were often made with SGOs to support special guardians to manage contact; local authority support for contact was usually short term because of the demands on local authority resources and a belief that family arrangements should not involve further state intervention but be normalised as far as possible. Contact orders limited carers' control over contact with the child and carried two distinct messages: first, carers must allow this level of contact and, secondly, that parents only had a right to this much contact. The frequency of contact set out in these orders varied widely.

Details of the frequency of contact were only recorded for S2. Where *orders* were made for mother's contact to children with SGO carers, contact was considerably restricted with the order setting out contact less often than once a month in two-thirds of cases. No order made with an SGO provided for contact more than once a month except one where the order simply stated 'reasonable contact'. The contact arrangements in *care plans* with SGOs were less constrained with more than a quarter proposing contact at least twice a month. Another 40% merely proposed 'reasonable contact' leaving the SGO carer and mother to agree what that was. This may have reflected the reality of a family situation where relationships are amicable; if not, such plans created a platform for conflict.

There were slightly fewer contact orders made in S1 cases than in S2, 14.7% compared with 18.6%, but this generally reflects the changing pattern of orders, particularly the larger number of SGOs. The relatively low numbers of contact orders mean that comparisons cannot be made at the local authority/court level. However, it was notable that only one contact order (in a case ending with a residence order) was made in Area C in S1 and none was made there in S2. Overall, the picture from the Study generally reflects that in the Court Statistics, with far larger numbers of private law (s.8) contact made in care proceedings than public law (s.34) orders, (see, MoJ 2018a).

## 9.6 Conclusion

This Chapter has provided an answer to **RQ 6** *To what extent do care proceedings under the new PLO result in different processes, plans, orders and outcomes after 12 months from those brought in 2009/10?* in respect of court orders. Specifically, figure 9.1 and table 9.1 show the differences in the orders made in the two samples, and further detail is provided at Area level in figures 9.4 and 9.5 for SGOs and SOs respectively. The qualitative analysis also sheds light on the reasons for changes to local authority care plans.

Despite the concerns expressed about some individual decisions and some judicial practices, local authority interviewees thought that courts generally made the right decisions. The most concern was expressed about Supervision Orders made without the local authority's support. Supervision Orders were recognised to have limited effect, and to be prone to fail, necessitating further local authority intervention and more damage to children (see Chapter 10). Although social work managers worried that SGOs might break down when children reached adolescence, they thought that these were the right orders, possibly because they recognised the difficulty in providing good care through adolescence:

*'I think... generally the right orders are being made but ... I think when it is not the right order is when we tend to end up... with this Supervision Order and Child Arrangement Orders for the children going to both the parents when that wasn't our plan.'* LA B LAS2

*'[I]t has always struck me as probably that the courts do appear to make the right decisions really. I mean whether we end with some Supervision Orders where I have probably thought a child's best interests might better be served by living in foster care and there is probably the odd one like that, but not many.'* LA B IRO2

By the time of the interviews, the effects of *Re B-S* had been accepted to the extent that everyone knew that it was much more difficult to obtain a Placement Order. There was no point expecting a return to past practice; the change in orders had exposed the power of judicial policy to reconfigure care proceedings.

## **Summary**

There were marked differences in the proportions of Placement (POs), Special Guardianship (SGOs) and Supervision (SOs) orders between the two samples, with fewer POs, particularly for children 1 year of age and more SGOs and SOs in S2. All types of order were made at the IRH in S2 but 'lower tariff' orders were more common at this stage.

The decision in *Re B-S* impacted on legal advice to local authorities, care plans, Children's Guardian's views, contests and on the orders made. Judges saw it as the reason for the change in orders, local authority interviewees considered that shorter proceedings were also a factor.

SOs were more commonly used with SGOs than previously, at least in part because of the reduced opportunities for thorough assessment and testing placements before orders were made. Most CAOs were made where children were placed with a parent, not for kin care. Contact orders were rarely made where children were subject to COs but were made with more than half SGOs and more than a third CAOs.

## **Chapter 10 Care after the end of care proceedings**

### **10.1 Introduction**

This chapter, like Chapter 8, uses the linked court and administrative data to provide a unique analysis of children's care after their care proceedings ended, and to illustrate the deeper understanding of the effects and effectiveness of care proceedings that could be obtained if the use of care proceedings were included in the databases of children's social care. It examines children's care and service journeys after the end of care proceedings for the whole sample. What we can know about the outcomes of care proceedings and children's care after the final hearing from these data is necessarily limited by the contents of the administrative databases and the size of our window. We have a deeper understanding from reading children's social care files, see Chapter 11, but analysing case files is a time-consuming activity, which could not be undertaken for all our sample, let alone for all children in care proceedings.

The CLA database allowed us to find out about care arrangements (residential and foster care), the number of placements, the reason specified for the child leaving care and when this occurred if it did, and any re-entries to care. The CiN database indicates periods when a child's case was open in children's services and whether the child had a child protection plan. In Wales, the CiN data is more limited because it is based on a survey (see Chapter 3). CLA and CiN data were available for all the 'matched children' (see Chapter 3, section 3.5, above), a total of 582 children (S1 262, S2 320), up to 31<sup>st</sup> March 2016 (the census date). This covered a period of 5 or more years after the end of the legal proceedings for 80% of S1, and of 1 year for 42% of S2. Proceedings had ended at least 9 months before the census date for three-quarters of the children in S2, and more than 6 years before then for just over a quarter of S1.

Information about further proceedings was gathered, for England only, by searching the Cafcass databases for subsequent family proceedings involving the child, up to January 2018. A total of 547 children (from the England samples) could have been subject to proceedings after the Study proceedings but for some of these only for part of the time because of their age. A third of the S1 children, who were over the age of 10 years when the care proceedings ended, were over the age for family proceedings before January 2018; this was also the case for 5% of S2, who were over 14 years when their proceedings ended.

### **10.2 Implementation of care plans**

Judges have repeatedly expressed concerns in cases (notably in *Re W and B*, *Re W* 2001) and as recorded in research studies (Hunt and Macleod 1999; Harwin et al 2003; Masson 2015) that local authorities fail to implement the care plans they have provided to the court, on the basis of which orders have been made.

Harwin's study found that 21 months after orders had been granted, 58% of plans for adoption, 78% for kinship care and 41% for parental care were implemented. Children remained in care because: adoption placements had not been found, or adoptions had not been finalised; potential relative carers were found to be unsuitable or withdrew; and parents were unable to care for their children for a various reasons, or placements with parents had broken down (Harwin et al 2003). Similarly, Lutman and Farmer (2013) also found a high failure rate where neglected children were re-unified with parents; half the sample children who had been re-unified returned to care within two years and two-thirds within 5 years (and see Farmer and Lutman 2012). Not all these children had been subject to care proceedings and almost 20% had returned home in an unplanned way, because children went home of their own accord, parents removed them from s.20 accommodation or the local authority returned them when it could not identify another suitable placement. These findings are echoed in a study by Biehal and colleagues, who also found that a third of the maltreated children in their sample who had been reunified returned to care because of abuse or neglect within 6 months, and two-thirds did so at within 4 years (Biehal et al 2015).

The Family Justice Review recognised that court scrutiny of care plans was essential to ensure a fair trial, satisfying ECHR arts 6 and 8, but noted that courts had increased their scrutiny and this went beyond what was intended in the Children Act 1989. Also, court scrutiny was ineffective because it occurred only when the order was made, and plans had to change to reflect the child's relationships and needs. The Review considered that the court's approach had contributed to costs and delays in proceedings and 'lack of confidence and decisiveness in local authorities' (FJR 2011b, 3.17). Its proposal to limit court scrutiny of the care plan received much criticism, which the Review considered reflected 'an undercurrent of deep scepticism about the ability of local authorities to deliver adequate care for children' (para 3.21). Nevertheless, the Review's proposals were enacted in the Children and Families Act 2014, s.15, and mainly implemented. The court must consider the 'permanence provisions' (s.31(3A) and (3B), of the s.31A care plan, that is, the long-term plan for a child to live with a parent, a relative or friend, be adopted or be in care with unrelated carers.

Examining implementation of the care plan involves two distinct issues: 1) Did the child move to the placement type outlined in the care plan? and 2) Did the arrangement continue and safeguard the child?

- 1) For children whose care plan means leaving care - those returning home, or made subject to an SGO, CAO or AO - implementation of the care plan is shown in the CLA database as the reason for leaving care. For children remaining in care, the CLA database shows changes of placement. There is no information about the implementation of the care plan for children not in care, who are a substantial minority of those subject to care proceedings (see Chapter 8) but it can be assumed that the parent or relative with the orders exercises the powers given by the order. The provision of services (other than a financial allowance) is indicated by the child's case being open in the CiN database, but this does not indicate the nature of the services provided.

- 2) The continuation of arrangements is evident where children remain in care, but for the others can only be inferred from the absence of evidence of return to care. If children (re) entered care in a different local authority, this would not have appeared in the CLA data made available for the Study but would have been shown in the Cafcass data if entry was by a court order. In other circumstances, a change of carer may be indicated by further family proceedings, not clear from the database alone. Definitive evidence requires sight of the terms of the order. Also, Wade et al (2014) found that children subject to SGOs moved within the family without further proceedings, and sometimes without the local authority being informed. The existence of a child protection plan (recorded in the CiN database) indicates that a child is considered at risk of significant harm, but absence does not mean that the child is safe. This is not simply an issue of identification it also relates to the way the local authority decides to manage risk where there have already been care proceedings. It was notable that none of the children subject to further care proceedings between 2011 and 2016 had child protection plans prior to the later court application.

With the exception of adoption plans, which necessarily involved further social work action, the final care plans approved in the Study were for immediate placement rather than arrangements contingent on future changes. Thus, it was no longer an issue that local authorities might not place children with parents or relatives in the future, as envisaged in the care plan; at the end of the proceedings, courts made orders which achieved the planned arrangements for placement with kin or re-unification with parents.

One consequence of this was that local authorities needed to plan the arrangements for re-unification or family placement before the final hearing. Another was the need to arrange transitions for children to family members. There was some 'testing' of placements during the proceedings but, as discussed in Chapter 8, placements with parents under ISOs were largely the result of courts refusing ICOs with removal and did not involve re-unification. Some relatives had care of the child before their SGO was granted, but as shown in Figure 7.6, a third of children went to live with their SGO carer only when the order was made. If the carer was only identified or accepted towards the end of the proceedings, two different approaches were taken to supporting the child's transition to their care. The court could decide the case but postpone making the final order to allow for transition under an ICO or an ICAO, which might prevent the case completing within 26 weeks. Alternatively, the court could make the final order, and leave the local authority to plan the transition with the carer. In these cases, transition was arranged with a s.20 agreement; there were 6 S2 cases where transition to a relative was arranged in this way. Where transition did not occur during the proceedings or s.20 was not used, it was not clear from the court and administrative data how children and new carers were helped to begin their family life together.

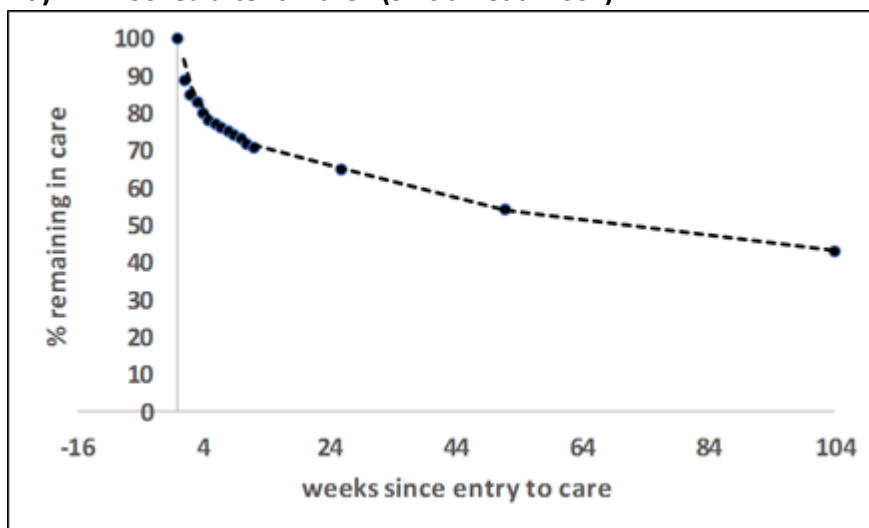
### 10.3 Leaving care

Figure 10.1 shows two leaving care curves, a) for all looked after children based on Sinclair et al's study (Sinclair et al 2007) and b) using data for the children looked after during care proceedings from this study, separating S1 and S2.

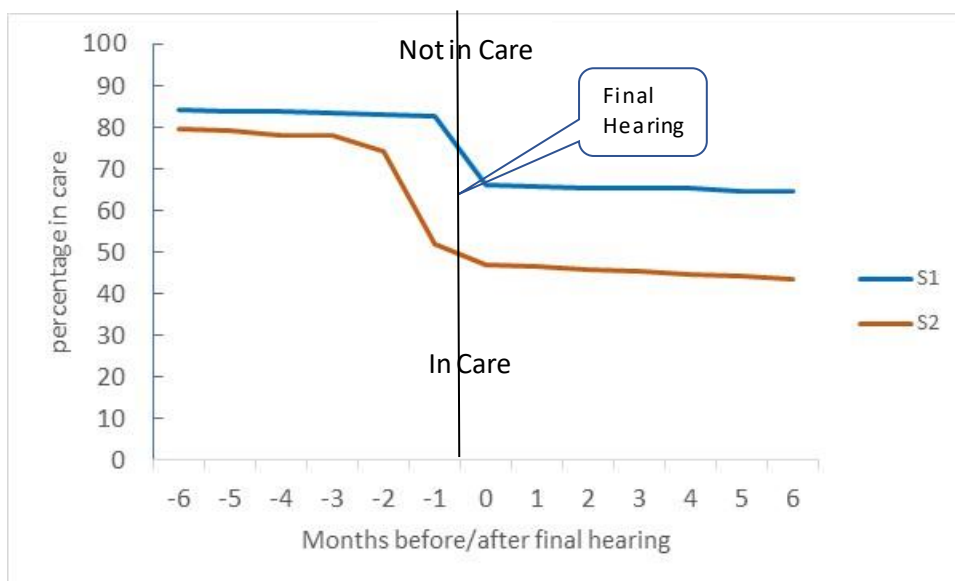
Sinclair et al's graph is based on all the children who entered care in 13 local authorities in England between mid-2002 and mid-2004, a total of over 7,000 children, of all ages, entering for any reason and by agreement or court order. It shows that many children rapidly left care in the first few weeks after entering, but that the rate of departure slowed considerably after that and continued to decline; 50% children remained in care one year after their entry, see figure 10.1 (a).

**Figure 10.1: Leaving curves All LAC and children in care proceedings and S1, S2**

**a) All looked after children (Sinclair et al 2007)**



**b) Children subject to proceedings S1 S2**

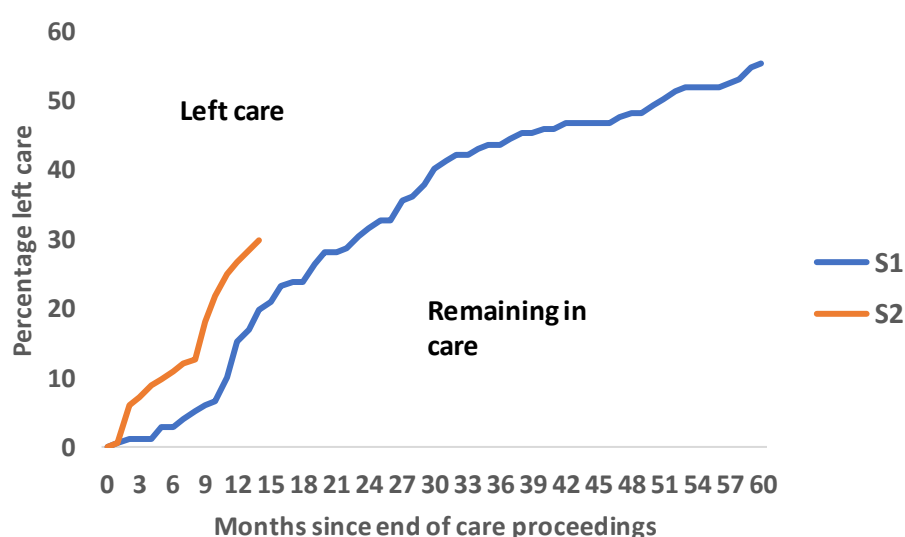




Graph 10.1(b) shows the point of leaving care for the children in the *Outcomes for Children Study*, standardised by the end of the proceedings. The shape is distinct with a ‘cliff edge’ starting shortly before the end of proceedings; this is not apparent from Sinclair’s graph because children leaving at the end of care proceedings were not separately identified and their proceedings ended at different points on the graph. Our graph shows the court’s control over leaving care for children in care in proceedings. Approximately a third of the children in care left shortly before or at the Final Hearing point. The proportion of S1 leaving was lower than S2, 26% compared with 39%, reflecting the larger proportion of SGOs and SOs made in S2, see table 9.1. Few children left in the first months after the end of the proceedings, 24 left in total in the first 6 months, these were mainly children (mentioned in 10.2 above) who remained in s.20 during a transition period.

Subsequently, there were two main reasons children left care – adoption and ‘ageing out’. Figure 10.2 shows the time to leaving care for the children who left after the end of proceedings. More than half the S1 children who remained in care after the end of the proceedings had left within 5 years. Only 77 children (26.5% of the total) remained in care at this point, which included 10 children who had entered or re-entered care after the end of the proceedings. Of the S1 children who left, 25 (a quarter of those leaving care after the proceedings) did so at age 18 years, and 67 were adopted. The picture is very different for S2. There were still 114 children in care on 31<sup>st</sup> March 2016. In the maximum of 14 months for which we had data, those who left care either went to parents or relatives following a short transition period accommodated under s.20 or were adopted.

**Figure 10.2: Rate of leaving care after the end of proceedings S1, S2**



In this Study, almost all the children who were re-unified went to live with their parent during the proceedings, at their end or shortly afterwards. Fewer than 6 children returned home later, and this was a result of them ‘running away’ or refusing to return to care after a contact visit; Tasmin’s case 4511 is an example.

#### Tasmin 4511

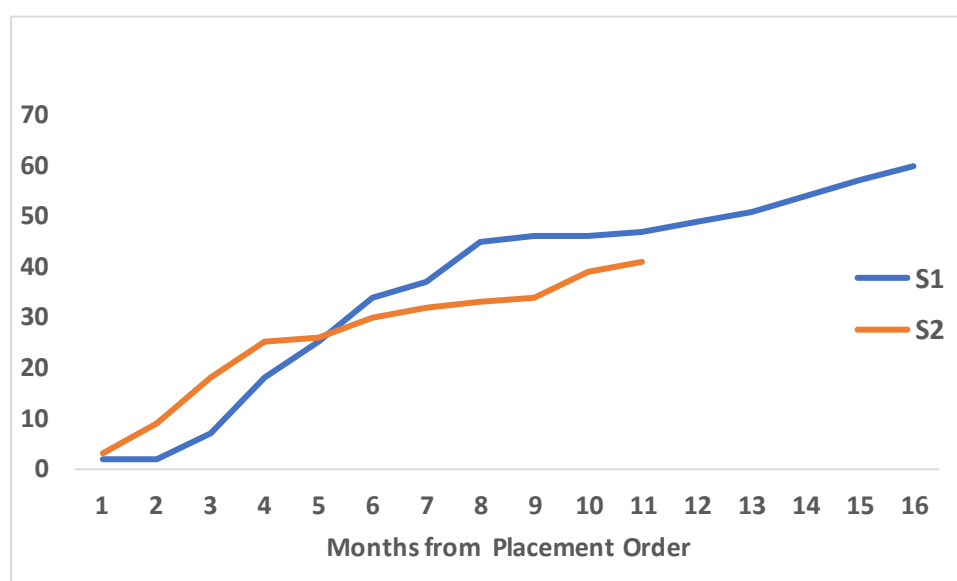
The case involved two white British children, Tasmin aged 11 and her brother aged 14. There were long-standing concerns about the volatile and violent relationship between their parents, and a sibling was living with a relative. The children stayed at home during the proceedings with no order, while assessments of their parents and likely kin carers continued. At the end, the court made care orders with plans for long-term foster care, and the children were placed separately. After three months, the two absconded following a contact visit with each other, and returned to their parents. It was decided to leave the children there, but after five months the parents were struggling to cope and the local authority moved Tasmin to live with an aunt. Three months later she went back to her parents. A year after the proceedings ended, she was still there, but her mother had separated from her father and was now accepting help to deal with Tasmin's behaviour. Tasmin had been keeping excellent attendance at school and was receiving counselling there.

### 10.4 Adoption

Chapter 9 identified changes to the proportion of cases ending with a placement order, the number of placement orders, and in the age of the children concerned. There were fewer placement orders for S2 children, 49 compared with 85 for S1 (see table 9.1) but the children were younger when the order was made, reflecting the effect of shorter care proceedings and changes to the use of these orders. When the placement order was made 55% of the S2 children were under the age of 1 year, compared with only 22% of those in S1; 14% of S2 children were over the age of 4 years compared with 30% of S1, see Figure 9.3 above. The numbers of placement orders and the ages of children both impacted on the implementation of these adoption plans.

**Figure 10.3: Time to placement and adoption S1, S2**

#### a) Numbers of children placed



### b) Percentage of children placed

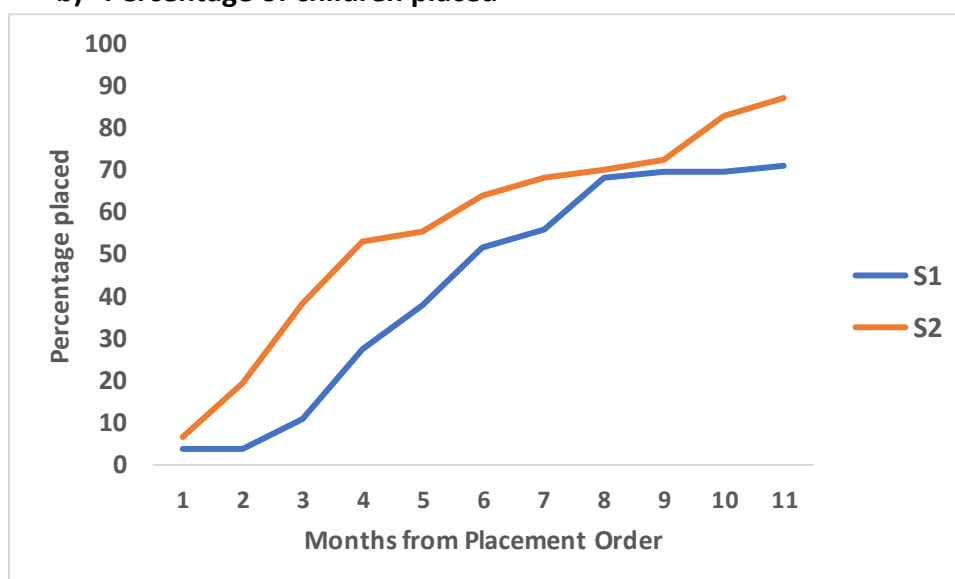


Figure 10.3 shows the time taken for the children in each sample to be placed, with a) showing the numbers of children placed and b) the proportion of the children with placement orders. The data in a) is right censored, that is information is only available up to 31<sup>st</sup> March 2016, by which time 41 of the S2 children had been placed. Almost 90% of S2 children were placed within 11 months of the making of the placement order. In contrast, by this point only 71% of S1 children had been placed for adoption but 47 placements had been made, and 60 within 16 months of the order.

Placements were achieved more quickly for S2 children because they were younger; also, the increased emphasis on planning in adoption practice and the lower number of children to be placed may have been contributing factors. Local authority interviewees spoke about the efforts in their services to speed up adoption. LAs A-D specifically mentioned tracking cases, where adoption was a possible plan from the earliest point, (the Legal Planning Meeting or during the pre-proceedings process) and appointing a Family Finder once the decision had been made to seek a placement order. This meant that someone in the adoption team knew about the child and their needs and could start to identify potential adoptive families by searching their own adopters or (anonymously) through Link Maker:

*‘We have dedicated Family Finders and so they hear about these children very early on so actually quite a lot of the work has been done in the background ... through our in-house looking and within the consortium, we can begin to get an idea about who might be available so ...for most of our children we can do it pretty quickly and we have more or less identified a family by the time the [Placement] Order is granted...’* LA C SWM3

The replacement of Adoption Panel approval of applications with the ADM was also identified as speeding up the process and avoiding delay but, within the context of the PLO, this also required early decisions about an adoption plan:

*‘We are making decisions about adoption at a much earlier stage. I mean realistically by kind of 16/18 weeks, because you obviously have to have your ADM paperwork in, your CPR [Child*

and Permanency Report] *in. You have to have your CPR in two weeks before the ADM makes their decision and then, obviously, we need the ADM decision prior to filing our final evidence. So realistically you are doing it really early in proceedings, which is sometimes good and sometimes tricky. A real dilemma, particularly if they have got a sibling group.*' LA E SWM3

The issue with sibling groups related to considerations about placing children 'together or apart' and the greater difficulty in placing two or more siblings with adopters together (see below, section 10.5 and Chapter 12). Placements were also difficult to find for older children, those aged 5 years or older but interviewees in each of the local authorities gave examples of achieving adoption for older children and children with complex needs.

The decision in *Re B-S* (2013) had encouraged applications to revoke placement orders and these could interrupt family finding or placement, even where they appeared to have no chance of success. Where children had been placed such applications were stressful for everyone:

*[A revocation application] causes a lot of stress, they [judges] don't seem to care, because I think they feel they are following a process, they want to be fair to the birth parents but I think they don't think about the impact that has on everyone involved and I don't think it is necessarily good for the birth parents either, they may feel like they have been fairly listened to but that could be done in one court hearing, I don't know if it needs to be dragged on for as long as it ... and the courts are incredibly busy so we can't get hearings quickly, it does take ages.*' LA B SWM3

The data window is too small to allow us to know whether all the S2 children with placement orders would be placed and adopted but it was clear that not all the S1 children with placement orders were adopted within 5 years of the placement order. One child was adopted by foster carers shortly before this point.

Adoption plans were achieved for 65 children from S1 who obtained care and placement orders. It was not achieved for the remaining 18 children (and another 2 whose order was overturned on appeal). The reversal of the ADM's decision was recorded for 11 children. The most common reasons given for the change in plan were that the child's needs had changed, or adopters had not been found. All the recorded reversals for children in S2 related to withdrawal of the PO application by the local authority or its refusal by the court.

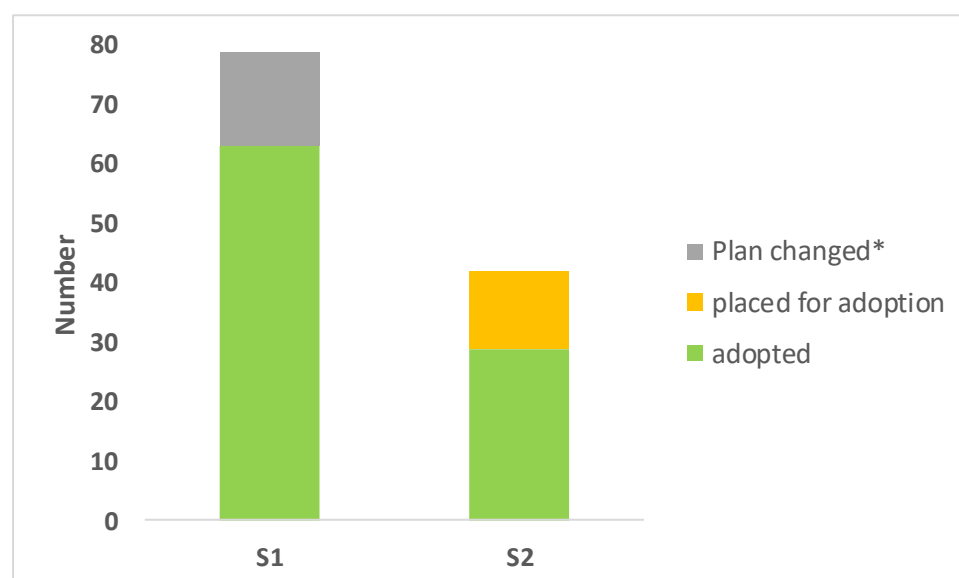
Getting the local authority to apply for discharge of a Placement Order was referred to as '*the bane of my life*' by IROs from two of the local authorities. Pressure on social workers to do more pressing work such as preparing children for placement or supporting adopters meant that applications for discharge were given low priority and not dealt with in a timely way. Also, it appeared that even where there was no longer any active family finding hopes remained that adoption could be achieved. In addition, the process was complex '*too complex*' and should be '*simplified*' or Placement Orders '*time-limited*' but tailored to the individual circumstances in the case. The judicial approach to such applications did not always recognise that not achieving adoption did not necessarily indicate that the local authority had failed to do its job:

*'[T]here is a number of old Placement Orders that we've not taken back to court to be discharged. So, children weren't adopted for whatever reason and the local authorities ... have not taken these orders back to court. Several years have elapsed and judge is not happy. So, judge is not only questioning the local authority about why it has taken so long and also questioning what plans for permanence are in place, as well as, scrutinising their hunt for adopters and whether that was rigorous enough. [The judge] is also questioning IROs as to why we didn't push this issue. But that is the only really contentious issue [about adoption practice].'* LA F IRO1

**Example: Olivia 6031**

This case involves two white British girls, Olivia, aged 5 at the final hearing and her sister aged 4. Their mother was very young, with mental health and substance abuse problems. Mother and the girls lived with her mother, but with very poor home conditions and violence in the family. In an attempt to avert proceedings, the local authority asked the mother to leave the home so that the grandmother became the primary carer. This did not happen, the authority started proceedings. Olivia and her sister stayed with their grandmother at first but later were placed together in foster care. Proceedings ended with care and placement orders. No adoptive placement was found, and after a year the plan changed for the children to remain with the foster carers.

**Figure 10.4: Outcome of Adoption Plans S1, S2**



\*Excludes children not adopted for whom no formal record of change of plan was found

The substantial number of children in S1 with POs who were not adopted (see figure 10.4), raises the question whether too many adoption plans were approved by the court. A PO only authorises the local authority to place for adoption, it does not guarantee that adopters will be identified; it provides an opportunity but cannot guarantee adoption will be achieved. However, it also signals to parents and relatives that the court and the local authority consider that the child's future lies permanently outside the family and leaves only limited ways to challenge this. Thus, a restrictive approach to granting placement orders

may deny children the opportunities that adoption gives (Tarren-Sweeney 2016; Palacios et al 2019) but the opposite approach may add to negative feelings by parents and relatives considered unable to care (Neil 2013; Deblasio 2018) without bringing any benefit to the child. It is not possible to avoid the adverse consequences of these alternatives because the future is never certain.

When granting orders freeing children for adoption, the court had to be satisfied that 'it was likely the child would be placed for adoption' (Adoption Act 1976, s.18(3)). There is no comparable provision in the current legislation, but as well as ensuring that making a placement order is proportionate (*Re B-S* 2013), courts have sometimes tried to restrict the length of a search for adopters (*Re S-F* 2017) or been asked to impose conditions about placing children together (*Re S-C* 2012; *Re A,B,C,D,E* 2017; 2018).

*'So we would normally be expected now within the Care Plan that we would file to say how long we were going to be looking for what and that would include the sibling groups, how long we are going to look for them all together, how long, at what point would we look for separate placements, how long would we look for those? I mean the Court would ordinarily expect that to be concluded within twelve months probably, eighteen maybe and the expectation is that we go back to Court at the end of that specified period. LA F IRO2*

*'I have also had a couple [of cases] where the guardian has said, particularly with children that have got really severe additional needs, "Perhaps the local authority should consider a recommendation of a Placement Order with a plan to bring it back in six months to revoke it if a placement is not found." But the local authority doesn't tend to go for that, if they are conscious that [a placement] is unlikely ....I think that sometimes the guardians perhaps are little too optimistic. LA A LAS1*

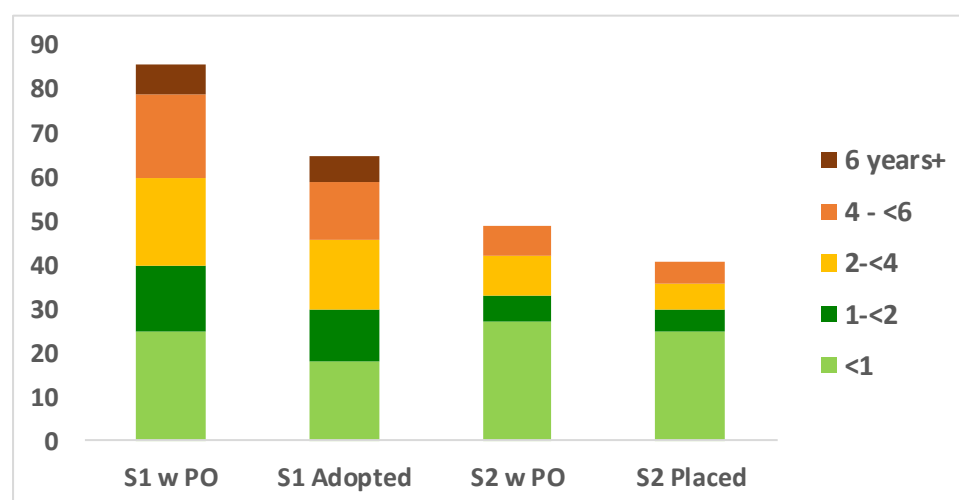
Figure 10.3 indicates that, for these samples, limiting the period of search to 6 months or less could have prevented finding a placement. At least half of the S1 children and approximately 40% of the S2 children were only placed after this point.

When the S1 cases were before the court, there was a shortage of adopters; the number of children on the Adoption Register substantially exceeded the number of approved adopters waiting (DfE 2011b; ARE 2012). The government sought to resolve this by changing local authority recruitment practice, and by promoting adoption (DfE 2011b; 2013a; 2013b) but changes in court practice, discussed in Chapter 2, resulted in a reduction in the number of children with adoption plans. Co-ordination between courts and local authorities, predictability and consistency of court decision-making, skilled assessment of children and continuous recruitment of adopters are all essential if adoption plans are to be made and implemented in time for the children who need them.

Figure 10.5 illustrates the age pattern at adoption or placement for the two samples. As identified in Chapter 9, the majority of S2 children with adoption plans (Placement Orders) were under the age of 1 year at the final hearing. The proportion of children with adoption plans in S1 who were adopted ranged from 65% for those aged 4-6 years to 85% for those aged over 6 years with only just over 70% of the youngest children having their adoption

plans realised. In contrast, over 90% of the youngest children in S2 had been placed for adoption within 11 months of their Placement Order. The proportion of children found adoption placements in S1 was slightly lower than that found by Farmer and colleagues in their study of linking and matching (81% vs 89%) (Farmer et al 2010). There was no difference between the placement rates for children with a minority ethnic background and white British children but this could be a result of fewer adoption plans being made in the LAs with the highest proportion of minority ethnic children. There were variations between local authorities with two LAs achieving adoptions for a much higher proportion of their children with placement orders (90%) and two doing markedly less well (<60%). However, the reasons for the variation are not clear. The local authorities which placed higher

**Figure 10.5: Number and age at Adoption S1; at Placement for Adoption S2\***



\*S2 Small numbers suppressed; ages for children over the age of 4 included in 4-6 year group proportions of children may have been less ambitious (i.e. not seeking placement orders for children who might be 'harder to place'), or those placing lower proportions may have sought adoption for children who were more challenging to place or been less good at finding placements.

Forty-two per cent of children in S1 were adopted as part of a sibling group, a higher proportion than was found in Ivaldi's study of adoptions in England in 1998-9 (Ivaldi 2000) or the more recent Welsh Adoption Study (Meakings et al 2017), which both found 30% of children were placed as part of a sibling group. Ivaldi also indicated that there was little difference between the plans for adopted children and what was achieved for them. Neither study linked children to their care proceedings and, therefore, was not able to capture the plans which resulted in placement orders being made.

The placement order group of 83 children included 20 sibling groups, of these 27 children from 13 sibling groups were adopted with a sibling and another 7 children from 4 families were adopted separately. There were 6 sibling pairs who were not adopted, either together or separately. Children placed in sibling groups accounted for 42 per cent of those whose adoption plans were achieved but 60 per cent of children for whom no adoptive placement

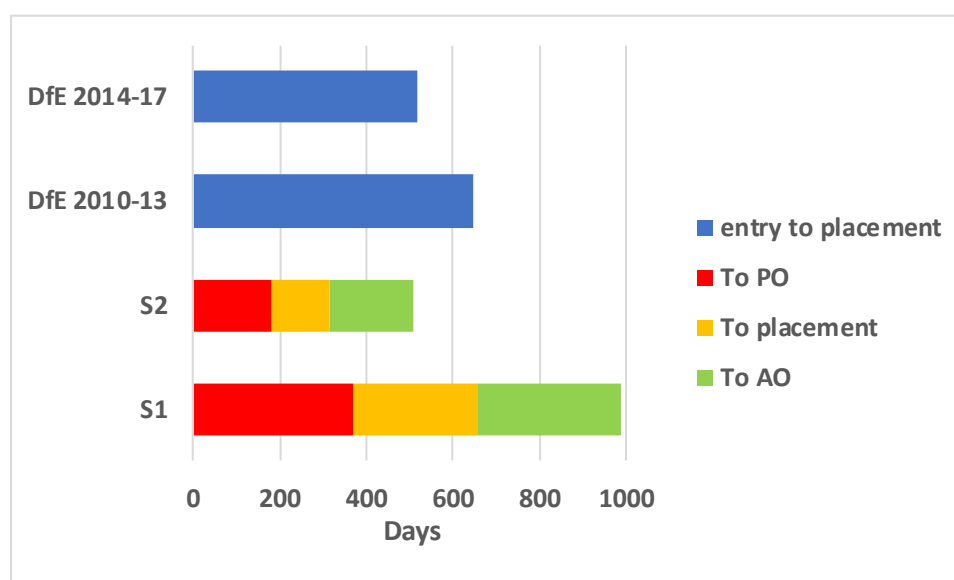
was found, indicating the greater difficulty local authorities experienced in achieving sibling placements in adoption:

*‘We have had quite a few placements of sibling groups which has been really good. We are cautious about approving people for siblings because it is a much bigger thing and they have to really evidence that to us that they can manage that.’ LA B SWM3*

*‘But where we don’t ask for Placement Orders is where there are siblings...If you have got a sibling group, you have a three year old and an eight years...’ LA C SWM4*

Figure 10.6 shows the time from the start of care proceedings to children leaving care by adoption for the two samples who were adopted by 31<sup>st</sup> March 2016 and compares this with the average times for entry to care to placement (not adoption) for children nationally at comparable times, before and after the PLO. However, it is important to note that the data for S2 does not include the time to placement or to adoption for any child not placed, or not adopted by 31st March 2016, and it is therefore limited to the children who were placed or placed and adopted quickly. The average time to placement and to adoption are likely to be greater for the whole sample.

**Figure 10.6: Time to placement/ adoption S1, S2 and England averages 2010-2017\* compared**



\* source DfE

## 10.5 Care for children remaining looked after

The focus of this section is on the children who remained in care, particularly the number of placements they experienced and whether they were placed with brothers and sisters. The interviews with social work managers and local authority lawyers about the difficulties experienced in making suitable placements and maintaining care services provide the local authority context for the children’s experiences. The more in-depth analysis of what was



provided for a subsample of children and young people in our file study is examined in Chapters 11 and 12.

The data we obtained from the CLA database did not include the placement postcodes so we were unable to establish whether children remained within the same geographical area when they moved placement, nor could we establish how geographically close they were to siblings placed separately, or to other members of their family. Our focus was on placement stability because this has been linked to better outcomes (Rubin et al 2005; Sebba et al 2015; McSherry et al 2018); multiple placement changes are more likely to lead to poor outcomes for children. The Department for Education has stated, 'Providing stability relies on identifying the right placement for a child early in their care journey whilst ensuring that individual and family needs are properly assessed and support services provided in order to achieve early permanence.' (DfE 2013b, 8).

Placement stability impacts on many aspects of a child's life – consistent schooling, making and keeping friends, being part of a local community and allows the development of a trusting relationship with carers. Placement stability will not necessarily secure all these benefits but without it they will all be harder to achieve (Berridge 1985). However, children may feel secure despite placement change or insecure despite continuity of placement (Beek 2014; McSherry et al 2018). Stability does not indicate the quality of a placement nor the extent to which it meets the child's needs. Information about placement quality is not held in administrative databases, nor could this be expected, given the different perspectives on this and changes over time.

Interviewees from all the Study local authorities repeatedly spoke of a 'crisis' in the recruitment of foster carers, the lack of in-house placements and the need to turn to high cost placements provided by Independent Fostering Agencies (IFAs) (see also Jones 2019). The shortage of placements restricted the possibilities for: matching child to carer/ placement and therefore increased the risk of breakdowns; finding placements that would be permanent; placing locally and so supporting family contact and other links with the home area; and sibling placements, either together or close by, to facilitate the development of relationships. Although there were some 'excellent carers', some placements were recognised to meet only some of young people's needs.

*'There is a lack of placements, lack of choice, lack of choice around teenage placements, there is difficulty that we haven't got enough to place in Borough then we have to liaise with other Boroughs who don't want our children, [Outer-London authority] have said, "please don't place anyone here." Yet because of the housing situation we struggle to have carers that live local to the Borough, that have got space in their house.'* LA B SWM8

The lack of foster placements was leading local authorities to turn to residential care, developing more in-house provision or relying on homes in the independent sector but this did not solve the difficulties of providing stability:

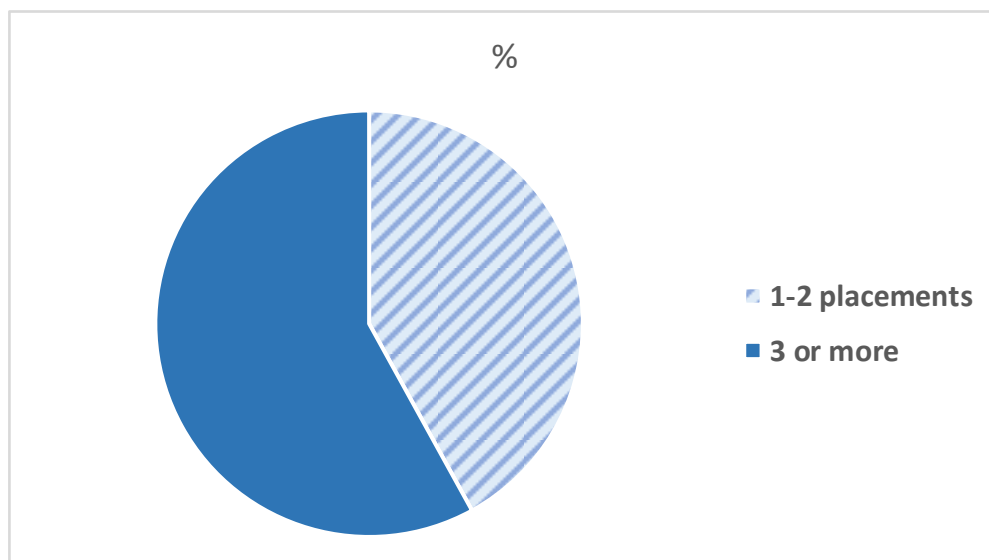
*'We are placing [young] people in residential because there are no fostering placements. But even those, they're not working out to be very successful. We've had a number of residential*

*placement breakdowns over the last 6 to 9 months, literally where a child has been in place for a week and the residential [placement] has given notice on it. And I think, again, the demand is out there so much that the residential providers can choose.'* LA F SWM4

Almost all the children and young people made subject to care orders were in 'stranger' foster care placements when the care order was made. The exceptions were 12 children from S1 in family and friends foster placements and a small number of children with health or development conditions who were placed in or moved to residential care early in their time in care. Except for the children with adoption plans, all the children could be expected to remain in care long-term, even to adulthood because options for re-unification or family placements had been explored and rejected when the care order was made.

**Figure 10.7: Number of placements from Final Hearing to T1 (1 year or to 31.3.16)**

**a) S1**



**b) S2**

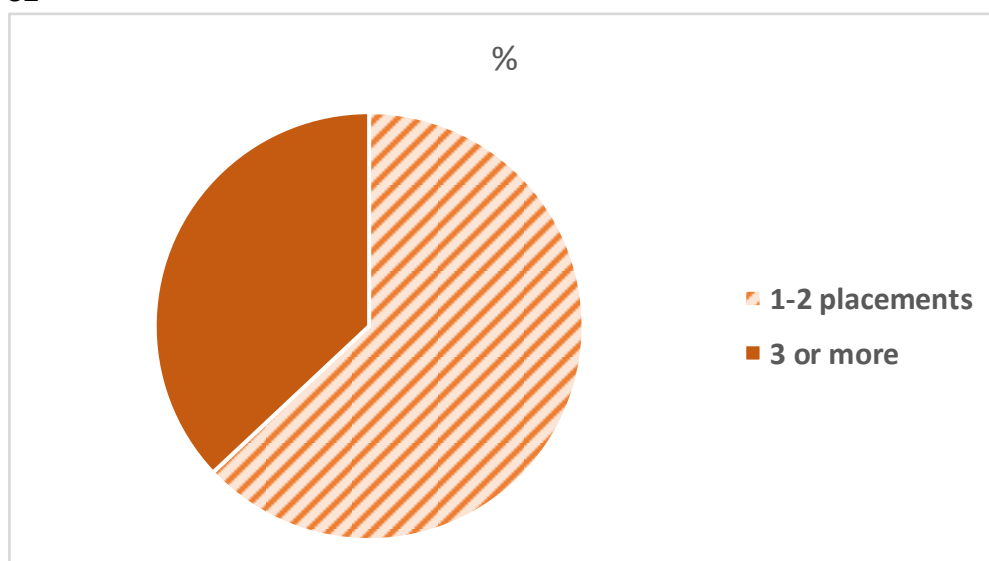


Figure 10.7 compares the number of placements during the first year after the Final Hearing (to T1 or 31<sup>st</sup> March 2016, whichever was earlier) for children with Care Orders in S1 and S2. Patterns of placement varied, some children experienced three or more placements during the first year after the care order was made but then achieved stability, others remained in the placement made when they first came into care which continued, or reached a lasting placement shortly after the Final Hearing. A small number were not found a stable placement. It appeared that the Study local authorities had been able to reduce the number of moves for children in S2. This may have been the result of more or better planning, shorter proceedings or (less positively) the need to maintain existing placements with carers 'soldiering on' LAC IRO3 in the face of a lack of alternatives:

*'And I think we are in a world where there is not lots of choice. So, unless there are real concerns, or this child really isn't settling in this placement, the chances are it will just go on.'*  
LA D IRO

Four of the local authorities relied to a considerable extent on 'out of authority' placements, and the other two did so sometimes. Such placements meant children were separated from their original home area and more social work time was taken travelling to visit them and for reviews etc. Distant placements also made it more difficult to provide support, to rebuild relationships and promote re-unification, which might not happen before age 18 but afterwards when young people sought to renew family links (Biehal et al 1995; Stein 2004).

*'There is this push to bring [our] riskiest children closest, so the county-wide principle is that we are better placed to look after our children if they are in [County], we can access mental health, we can access education. We can do that in other counties, but it's more difficult and the join up...you know contact is difficult and reunification suddenly becomes harder and for children just the psychology of living many miles away, is very hard.'* LA E SWM2

The location of the proposed placement was noted as a major factor in the courts with judges in this Area refusing to approve care plans if children were placed far away:

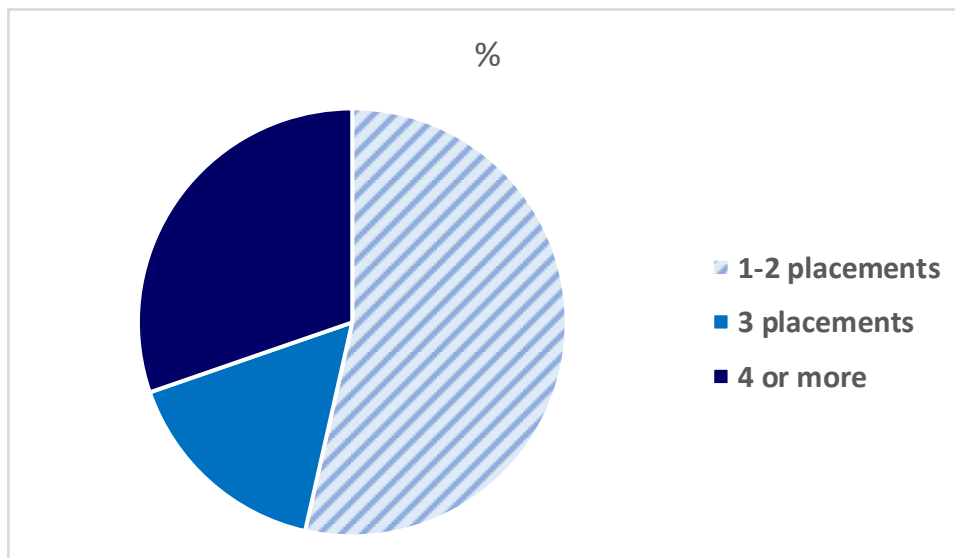
*'We are really struggling to keep children in county, that's a huge problem and our judges are saying, "I will not make this order on this plan that means the child has to go to (an LA some distance away), come back tomorrow with a different placement." Well, yeah exactly!'*  
LA E LAS

Achieving placement stability was challenging where children were over the age of 10 years when the CO was made. However, over half of these children had 2 or fewer placements before 31.3.16 or they left care; 16% had 3 placements and the remaining 30% had 4 or more placements. The placement pattern was very different for children aged under 10 years when the CO was made. Half these children (20) had only one placement; 8, 20% had 2 placements; 12, 30% had 3 or more. The maximum number of placements was 9, see Figure 10.8, below.

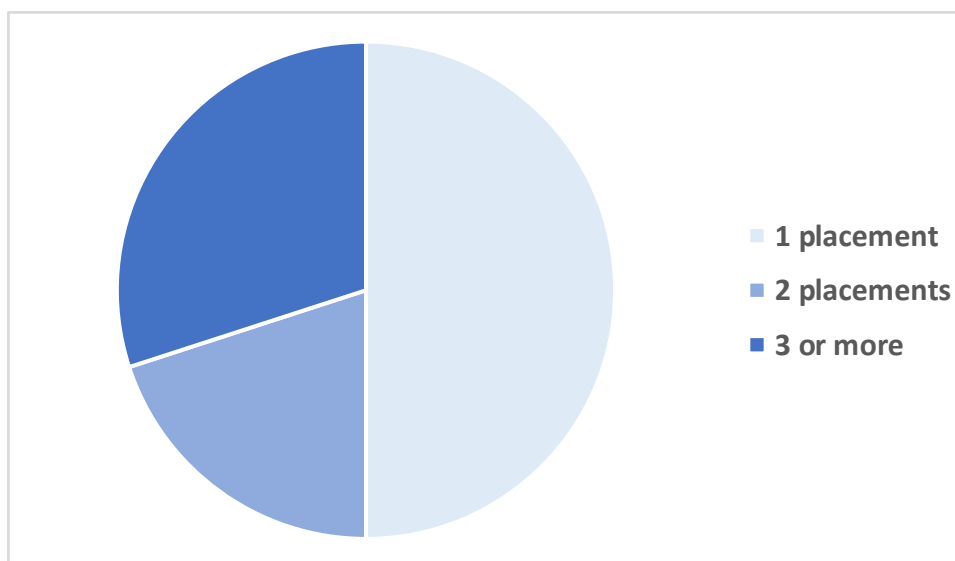
Local authorities had found and maintained a stable placement for most children who were made subject to a Care Order before the age of 10 years. Older children experienced more placements and more rejection:

**Figure 10.8: Number of placements from Final Hearing to T2 (5 years) S1**

**a) Children > 10 years at CO (N=44)**



**b) Children <10 years at CO (N=40)**



*'Keeping them in the same placement. Continuity of placement ...becomes an issue when the child is much older ... I think it is much harder because they may not have experienced family life at home and that their loyalties split and they can't settle in the new home, it is a constant reminder of what they are not getting, so therefore the behaviour is... their emotions and feelings will all come out in the behaviour and sometimes it is beyond that carers' ability to manage and understand. Some foster carers find that in the easiest way to deal with that is to end the placement and then that child suffers another rejection and they go to another placement and they have two rejections behind them and it is like a perpetuating cycle until they may find the carer who actually understands what they are going through and talk it through, "let's see what you're going through and work it out and see how things will work." And the young person might be 16 by then.'* LA A SWM4

Local authorities responded by providing training and support for carers:

*'[Our work] it's trying to help the carers understand those early experiences and how we can support them to change the way they care for those children because too much emphasis is on about working with children to change the child but the way we're working with our carers is to help them understand that child and change the way they're caring for that child and that in turn will support the child to change their internal working model.'* LA F SWM4

They also placed older children in residential care or semi-independence units, but this did not necessarily provide stability as the earlier reflection about breakdown of residential placements made clear.

Examples from the casefile study of the services local authorities provided with the aim of supporting carers and maintaining placements are discussed in Chapters 11 and 12.

### *Placement with siblings*

The CLA Database does not attempt to record whether children are related to each other but this information is recorded in the court application where siblings are subject to the same proceedings together or cases are consolidated, and an account of family relationships is included in social work evidence in text and/or a genogram. By linking the Study court data with administrative data, we were able to identify cases where children were placed with their brothers and sisters. This identification was not complete; without the placement postcode it was not possible to be sure that those who moved after the end of proceedings (as many did) remained together. This information was available on children's social care files and we were able to consider how local authorities responded to the challenges of maintaining relationships between siblings in the care system (see below Chapters 11 and 12). It was also easier to establish where children were placed together for adoption; where siblings left care to be adopted on the same day, it was assumed that they were adopted together.

Monk and MacVarish (2018) highlighted the profound impact Family Court decision-making can have on sibling relationships for children subject to care and adoption proceedings, and noted the lack of statistics on the numbers of children separated through these processes. Separation from siblings, including siblings whom children have never lived with (Masson et al 1997) is a matter of sadness and concern for children in care (Children's Rights Director for England 2014).

There were 110 children, (18%) of the sample who were only children when their care proceedings were brought, two of whom had gained siblings during the proceedings. The remaining 508 children (82.5%) included 119 (19.3%) of the total sample who were subject to care proceedings alone. Most of the brothers and sisters of these children had either been placed separately as a result of previous court decisions, including private law proceedings, were being cared for by kin away from the parental home without court orders, or were already adults. There were 344 children (55.9%) of the total sample where we had clear information about placement with siblings and another 45 children (7.3%) where information about relationships and placement was missing. These were mainly

children where little was recorded about their father or his identity was unknown. A variable was created to code whether children were placed with all, some or none of the children in their case, or were placed with siblings who were not part of the case, see table 10.1, below.

**Table 10.1: Sibling placement by carer**

	Parent/Rel		Foster/ Adopt		Total	
	N	%	N	%	N	%
Entered alone	56	18.1	63	24.0	119	20.8
Not Placed with any siblings	31	10.0	69	26.0	99	17.3
Placed with some case siblings	34	11.0	33	12.6	67	11.7
Placed with all case siblings	121	39.2	54	20.6	175	30.6
Placed with non-case siblings	3	1.0	2	0.7	5	0.9
Only child at time of case	64	20.7	42	16.0	106	18.6
Total	309	100	262	99.9	571	99.9

As might be expected, placement with a sibling was more common where children returned to, or remained at, home or were cared for by a relative; only 54 children, just over a third (30.9%) of those who were placed with all the siblings they entered care with, were in foster care with an unrelated foster carer or with an adoptive parent. If only children who entered proceedings with a sibling are considered, 1 in 6 of those who were placed with, remained with or returned to a parent or relative were separated from all their siblings, compared with more than two-fifths of children placed with unrelated carers. There was a statistically significant difference between being placed with siblings and the carer (parent/ relative or foster carer/ adopter),  $X^2 = 31.3$   $p = <0.0001$ . More children in S2 were placed with siblings because of the greater use of SGOs and SOs; local authorities appeared to be less successful in achieving sibling placements in S2 with fewer than half foster or adoptive placements being made with a sibling compared with nearly two-thirds in S1. The number of S2 children known to have been moved to local authority placements with a sibling (30) was only just over half that for S1 (56) but this may reflect the greater difficulty of seeing joint foster placements in the data and the smaller number of adoptive placements.

There was comparatively little difference between family and unrelated placements when it came to placing sibling pairs but only 11 out of 82 children in groups of 3 or 4 children were

**Lily 5271**

Lily was the eldest of three white British children living with their mother. They had different fathers. There was a long history of neglect related to their mother's alcohol use. After an incident they were accommodated under s.20, and care proceedings were started. Lily moved to paternal relatives and the youngest child was placed with his father. The middle sibling remained in foster care. The final orders were a SGO for Lily, a RO for the youngest and a CO for the middle child.

placed with unrelated carers. Of the remaining 71 children (who were with parents or relatives), 22 were cared for by relatives under SGOs, 8 with care orders and the others were with their parents, subject to supervision orders. Overall, 57 of the children who were placed with three or four siblings were placed with all the children with whom they entered care proceedings. By contrast, more than a quarter of the children who were known to have entered proceedings with 3 or more siblings were not placed with any of their siblings. This was not simply the consequence of a lack of foster placements, children were split between relatives, particularly where they had different fathers:

Between 60% and 80% of children with siblings were placed or remained with at least one sibling. LA D had the highest proportion of sibling placements:

*'We do very well with the sibling groups with the lack of placements. We haven't got many carers, but we have got quite a lot who have got sibling groups, who have happened to have the vacancy at the right time. Sometimes we have had to have temporary solutions and then have been able to move children back together. Obviously, if there is a group bigger than three it does become very problematic, because people haven't really got the space, but then we would try at least to have them close with carers who know each other, so there was good contact, if they weren't living together.'* LA D SWM3

The children placed with 'non-case children' included: children joining siblings already in the care of relatives: children cared for by older siblings under SGOs; and children in adoptive placement with the adopters of an older sibling.

Despite the high incidence of sibling placement, children were likely to face more separation from siblings in the future, not just because of placement breakdown but because their families continued to change. After they entered care many of the children in the sample were likely to gain new siblings, who might remain at home or enter care in the same local authority or elsewhere. Maintaining (or building) these relationships is very challenging for children, their parents and carers and for local authorities.

## **10.6 Further proceedings**

By tracking the children's mothers in the Cafcass databases (Alrouh and Broadhurst 2015), it was possible to establish whether children in the English samples had been involved in further family proceedings after their Study case.

Information on further proceedings was potentially available for 547 children. The risk of further proceedings and the type of family proceedings risked depends on the original order made, and the length of time they remained at risk relates to their age, see table 10.2.

**Table 10.2: Orders and possible future proceedings**

Original Order	Possible future proceedings/Order	Conditions	Comments
PO	Adoption Discharge of PO	Adoptive placement Not placed for adoption	Cafcass data incomplete
CO	Discharge of CO s.34 contact order  Recovery (s.50) Secure A. (s.25) Placement Order	18 years	Available providing the person is still a child (<18 years/ unmarried). But, only discharge, recovery and s.25 are used over age 16 years
SO	Extension of SO Care proceedings, s.31 Private law, s.8 (CAO etc)	17 years 17 years 16 years*	Orders cannot have effect beyond this age; *exceptionally to age 18
CAO	CAO (living with or contact) PSO or SIO Care proceedings, s.31	16 years* 16 years* 17 years	(see above)
SGO	Discharge of SGO CAO (contact) Care proceedings, s.31	18 years 16 years* 17 years	SGOs have no effect beyond age 18 years

Table 10.2 sets out the proceedings and orders available after care proceedings have ended. What further proceedings can be brought depends on the original order made, the child's circumstances (for example, whether they are placed for adoption or not) and their age. The most common proceedings/ orders are in bold. If a CO is granted or an Adoption Order is made, further care proceedings are only possible if the original order is overturned on appeal, is discharged (see examples in section 5.6, above) or the adoption breaks down. These are all rare occurrences (MoJ 2017, table 3.9; MoJ 2018a, table 4; Selwyn et al 2014).

Conversely, further care proceedings may be required if improvements to parental care supported by a SO are not maintained. Orders can only be made in respect of children, there are lower statutory age limits for some orders and all family proceedings are unusual for children over the age of 14 years (Masson et al 2008; Harding and Newnham 2015).

Tracking of the Cafcass database in January 2018 provided a maximum window for further proceedings of approximately 6 years after the original order for S1 cases and two years for S2 cases.

### *Public law proceedings*

New care proceedings were identified for 29 children from 21 families, including 2 sets of care proceedings for 2 of the children. There was no significant difference between the numbers of new s.31 cases or children in such cases in S1 and S2 despite the shorter time frame; there were subsequent applications in 5.7% of S1 and 6.6% of S2 cases. However, a rather different picture is revealed by considering only cases ending with a SO (and no other



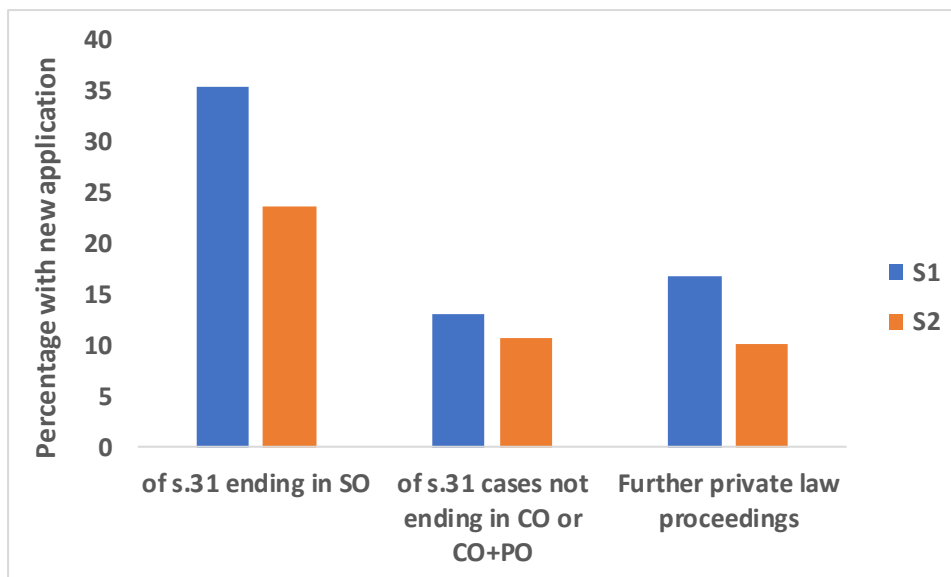
order). Cases originally ending with SOs were by far those most likely to return to court for further care proceedings. Of the 32 S1 children from England whose cases ended with a SO, 10 (31.3%) were subject to another s.31 application. There were further care proceedings for more S2 children (13) but the number of original SOs was higher (59) resulting in a reapplication rate of 22%. These rates of return are higher than those found by Harwin et al (2019a) for all SOs made between 2010/11 and 2015/16 in England, using survival analysis and a maximum 5 year follow up (Harwin et al 2019a: 35). The difference is most likely due to the sample, with higher rates of reapplication in the 5 LAs in the Study.

A further s.31 application was made for 7 children subject to RO/CAO with SO in the Study proceedings (S1, 4; S2, 3). As identified in section 9.4, above, the majority of these orders were in favour of parents. The further s.31 proceedings rate for these cases was slightly lower than for SOs alone (S1 22%, S2 15.8%) but the numbers are very small, only 39 of these orders were made overall. No child who was only subject to a RO or CAO without a SO was subject to further proceedings. Whilst this may indicate that supervision orders had been appropriately targeted, it could mean that later difficulties were not identified. Two children subject to SGOs, one from each sample, had further care proceedings after the breakdown of this arrangement.

Of these 31 repeat s.31 applications, 13 (41.9%) resulted in care or care and placement orders, 5 (16.1%) in supervision orders, 5 (16%) in SGOs and 1 in a RO/CAO. There were another 7 children (22.6%) whose cases were not complete when the data were collected. These figures are comparable with orders made in the 46 reapplications in the Study samples (combined), where 46.5% of 'repeat' cases ended with CO and another 16.3% with CO+PO.

Figure 10.9 illustrates the proportion of cases with different orders returning to court for each sample.

**Figure 10.9: Further proceedings S1, S2**



### *Private law proceedings*

There were 26 children with further private law proceedings after the end of the Study case, 19 children were involved in only 1 set of proceedings but the remaining 7 (from 6 separate families, all but two from S1) had up to 4 more, including 2 cases where SGOs had been made originally, 2 where the father became the carer and 2 where the parents both had care either together or in an alternating arrangement. In this case, (1812) care proceedings had been started in a highly disputed case where the mother was mentally unwell. Shared care, which requires good co-operation seemed completely unrealistic, and so it proved.

Most applications related to contact but there were applications for transfer of residence, both in relation to children subject to RO/CAO and children with SGOs. There were 6 children in S1 (30%) and 5 (26.3%) in S2 with RO/CAO who became subject to further private law proceedings and another 7 children originally subject to SGOs, 1 (2.9%) in S1 and 6 in S2 (9.1%). Of these 7 children, 5, all S2, had been made subject to a SGO with SO; 17.2% of S2 children with this combination of orders were subject to further private law proceedings within 2 years of the original order. The combination of SGO+SO was only used in 2 S1 cases but for half the children with SGOs in S2. The impression from the data was that these orders were used where the court had concerns about the arrangement. This view is supported by findings from a study by Harwin et al (2019a) that family conflict was more common than in cases with a SGO alone (p.96). Figure 10.9, above, also shows the proportion of cases in each sample with further private family law proceedings.

Overall, s.31 reapplications were most common for cases ending in SOs but were made for more than 10% of all cases, which did not end in a CO or CO+ PO. More cases had further private law applications, most commonly in relation to contact, see above Figure 10.9.

## **10.7 Conclusion**

The analysis for this Chapter contributes to answering **RQs 1, 2, 5 and 7**. The CLA database records the date a child left care and the reason for leaving. Linking Court and CLA data made it clear that a large proportion of children subject to care proceedings left care around the time the proceedings ended. The 'leaving care curve' for children subject to care proceedings is very different from that for all looked after children.

The administrative databases only hold current information where children are looked after or 'in need'. On their own, these databases provide little information on outcomes (**RQ 1**); outcomes for children not in care after care proceedings are largely a matter of the quality of care they receive, the capacities of their carers and children's relationships with carers, family, friends etc. Local authority support for children, carers and families is important, but the administrative databases cannot capture the qualities required. The CLA database shows whether a child is looked after, and therefore can provide some limited information related to outcomes such as placement stability and reason for leaving care (**RQ 1**). It allows a partial answer to **RQ 2** *What are the characteristics of children and proceedings where care plans are (or are not) fulfilled 12 months after the final order?* Children who were still in care 12 months after the order either had permanence plans for long-term care or adoption (and had not yet been adopted). The CLA database shows children's ages and the number and type of placements and thus can provide a way to measure for placement stability (but not placement quality or match) for children of different ages. Whether a child is placed for adoption is also recorded; 12 months is a relatively short time for finalising adoption and the time between placement and the adoption order is out of the control of the local authority but dependent on the adopters and the court. Sibling relationships which adds to the challenges of finding placements are not recorded in the administrative databases.

**RQ5** *What explanations are given by local authority social workers, managers and lawyers for the making, non-implementation and breakdown of care plans which are not successfully fulfilled?* Local authority staff interviewed indicated that the main reason for the non-implementation of adoption plans was the shortage of placements; this also contributed to the breakdown of foster placements because of difficulties in matching placements to children's needs. Placements with parents broke down because the original plan/ order was too optimistic; where parents did not engage with the services offered; where insufficient support was provided; and where these factors combined. There was considerable scepticism from some interviewees about the value of supervision orders to improve parental care.

**RQ 7.** *What further family law proceedings are brought in relation to the children in the study?* Both further public law and private law proceedings were brought, as set out in Figure 10.9, above. Further s.31 proceedings were brought in almost a third of S1 cases ending in SOs. The proportion in S2 was lower (22%) but over a shorter period, two years, rather than 6 years. Contact disputes were the most common private law applications.

## Summary

Linking the Study court data with the DfE administrative data made it possible to see what happened to children after the Final Hearing but provided very little information for children who were not in care, particularly more than one year after the order. Plans for reunification or kincare were implemented by the orders made at the end of care proceedings (SO, CAO/RO or SGO). Most children with adoption plans were adopted; most children with plans for long-term care left care at age 18 years. The end of care proceedings is a key point when children leave care; analysing CLA data by the end of care proceedings produces a very different leaving care curve from one based solely on duration of care.

Fewer S2 children were placed for adoption, the numbers of children with adoption plans was lower, particularly aged over 1 year but they were placed for adoption more quickly and a higher proportion of those with POs were placed within 11 months of the order and overall.

Children in S2 had fewer care placements in the year after the order than those in S1. More S1 children aged under 10 years than over 10 years at the end of proceedings had only one care placement in the 5 years after the proceedings ended. Children placed (or remaining with) parents or relatives were more likely to be placed with a sibling than those in adoptive or foster care. 1 in 6 of those who were placed with, remained with or returned to a parent or relative were separated from all their siblings, compared with more than two-fifths of children placed with unrelated carers.

Further s.31 applications were brought in almost a third of S1 cases ending in SOs. The proportion in S2 was lower (22%) but over a shorter period, two years, rather than 6 years. Contact disputes were the most common private law applications, and more common where there was a CAO with SO than for other private law orders.

## Chapter 11 How did the children fare?

### 11.1 Introduction

This chapter and the one that follows highlight findings from the purposive sample, to give more details about the children's wellbeing over time – the longer-term outcomes of care proceedings – drawing on data from the local authority case files. The views of local authority interviewees are also used to expand on the challenges and implications for policy, planning and practice. This chapter looks at the wellbeing trajectories of the children, focusing on three main groups – those with plans for long-term care outside the family; those in kinship care; and those in parental care.

Chapter 4 discussed some of the conceptual debates and practical difficulties about assessing the longer-term outcomes of care proceedings, and the options for trying to measure children's wellbeing. Chapter 3 gave a full account of the principles and procedure for selecting the purposive sample. To recap briefly, the aim was to select a sample that was broadly representative of the wider sample in terms of core factors such as age, gender and ethnicity, but was 'purposive' in that it enabled the researchers to look more closely at cases with particular features, such as cases where plans were disputed or changed, where there were different plans for different children, where the proceedings ended with on-going uncertainty about where the child would live, or with complex contact plans. We selected one child for the sample per case and ended with a sample of 118 children.

Chapter 3 also described the system for rating the children's wellbeing, a year after the proceedings had ended for both samples (T1), and, for cases in S1, five years afterwards (T2). This enables two sorts of comparison: first, between the samples at T1, and second, between T1 and T2 for children in S1. For the S1 children, it also allows us to investigate the circumstances of those who experienced increases or falls in their wellbeing between the two checkpoints.

As noted in Chapter 3, we decided not to include children who had been adopted in the purposive sample, although we did include cases that had ended with care and placement orders, but the children had not been adopted within the follow-up periods (as far as we could tell at the point of selecting the sub-sample). It turned out that there were five children in the purposive sample (all from S1) who had in fact been adopted, although for three this was a result of subsequent care proceedings. In one case the adoption broke down, and one was adopted just a month before T2. This sampling decision meant that the profile of court orders in the purposive sample differs from the pattern in the wider sample, as shown in Table 11.1, below.

Thinking in terms of plans for the children rather than court orders, the sampling strategy gave us three main groups of children in the purposive sample:

- children on care orders with plans for long-term care and not placed with kin (20 in S1 and 20 in S2),

- children living with kinship/friend carers, usually under special guardianship orders, but in S2 there were three cases where the children were placed with non-parental carers under a CAO, and one where it was under a care order (12 in S1 and 18 in S2)
- children living with one or both parents (19 in S1 and 19 in S2).

**Table 11.1: Court orders in the full and purposive samples**

	Sample 1 (before reform)		Sample 1 purposive sample		Sample 2 (after reform)		Sample 2 purposive sample	
Care orders	88	31%	20	34%	93	29%	21	35%
CO+PO	85	30%	7	12%	49	15%	3	5%
Supervision orders	33	12%	12	21%	64	20%	15	25%
RO/CAO (+SO)	32	11%	7	12%	30	9%	6	10%
SGO, SGO+SO	36	13%	12	21%	78	24%	14	23%
No order/withd'n etc	12	4%	0	0%	11	3%	1	2%
Totals	286	100%	58	100%	325	100%	60	100%

The sample also includes a smaller group where the proceedings had ended with care and placement orders but it appeared the children had not been adopted or placed for adoption in the follow-up period; from S1 as a whole this was 21 children, with 7 in the purposive sample; from S2 as a whole it was 8, with 3 in the purposive sample.

## 11.2 Wellbeing ratings

We gave researcher ratings of the children's wellbeing at two points after their proceedings had ended, but the starting point for assessing their progress and wellbeing has to be the point at which the care proceedings were started – or a stage earlier than that, when emergency action was taken, or s.20 accommodation provided on a protective basis (*Re M* 1994 HL). For some children, especially in S1, there was a long period of time between this starting point and the conclusion of the proceedings, as shown in Chapter 8, making the quality of care and services they receive during that time crucially important for their later wellbeing; and as Chapter 8 showed, a significant proportion of the children were not actually in care during that period, but living with parents or kin.

For both samples, as shown in Chapter 5, almost all the children were experiencing high levels of need and harm at the time the proceedings were started – and, very often, had been for a considerable period of time before that. As has been noted in previous studies, the 'threshold conditions' of actual or likely significant harm in s.31 of the Children Act are usually met without difficulty. It was rare to find a case with only one serious concern, there were usually combinations of challenges, commonly involving at least two of the following: drug or alcohol misuse, inter-partner violence, mental health difficulties, severe neglect of the children, emotional abuse, unsuitable home conditions or housing insecurity, learning disabilities and lack of engagement with services. As noted in Chapter 5, these rightly have to be set against positives in the families, and the question arises of whether the 'right sort'

of services and support were offered to facilitate engagement. But even so, the severity and duration of the harm that some of the children had experienced had clearly left them with considerable on-going needs, that are likely to be challenging for any carer.

Children in care are four times more likely than children in the general population to have special educational needs, and just over nine times more likely to have a statement of special educational needs (SEN) or an 'Education, health and care plan' (EHCP). Nationally, only 2.8% of the school population have a SEN statement or an EHCP, but there are also 11.6% with 'special needs support', giving a total of 14.4% with special education needs (DfE, 2017b). Our sample reflects that higher prevalence of special needs but also shows that difficulties may not be known when children are very young and/or at the start of proceedings. In the full sample 86 children are recorded to have an SEN statement or an EHCP during the proceedings out of 313 possible cases (303 cases excluded: 284 because the child was too young, 19 not known). This is 28%. The purposive sample shows that further cases were identified after the proceedings. From the 118 children in the purposive sample, there were 46 who were old enough have a statement at the time of the proceedings, and 16 of them did, 35%; but by the end of the follow-up period, that had risen to 34, 40% of those now old enough.

In this context, the wellbeing scores of the children a year after the proceedings ended can be seen as remarkably positive. The pie charts, Figure 11.1, below show the ratings that the researchers gave for the children's overall wellbeing, enabling the horizontal comparisons between the samples at T1 (one year); and vertically, between T1 and T2, for S2. The Sankey diagrams, Figures 11.2, 11.4 and 11.6, below, illustrate the trajectories of the S1 cases between T1 and T2, showing how many went from 'satisfactory' to 'good', or vice-versa, how many stayed level, and so on.

It should be emphasised that the statistics being discussed here are drawn from the purposive sample and should not be taken to apply to the whole sample. The purposive sample is just that, purposive, not intended to be representative of the whole sample, and as we have explained, over-represents certain types of case and under-represents others. Nevertheless, it includes about a third of the cases and a fifth of the children and offers insights into the challenges of planning and caring for children who have been through care proceedings. The case files reveal dimensions that are not available from the DfE data about the complex needs and circumstances of the children, their families and carers, and their own wishes, feelings and agency. None of these are static but interact and change as time goes on. In the next chapter, there is further discussion about three crucial but complex factors for children's wellbeing and the implications for social work planning and practice: family dynamics, and especially parental contact; considerations about sibling placement and contact; and the strengths and limitations of the services the children and their families receive.

One general comment about the wellbeing ratings is worth making at this point: the times at which we took them, one year and five years, are simply moments in time, and from the case studies it became clear that we are dealing with the ups and downs of people's lives,

fluid and often unpredictable situations with change always a possibility, for good or ill, in planned and unplanned ways. As our researchers read the files, they found evidence of the children's wellbeing changing between and after the set checkpoints; and also, that the scores might be the same but the circumstances very different. As an example, one case involved a 2-year-old girl who was living at home with her mother at T1, under a supervision order. From the file data, we assessed her wellbeing as 'good' at T1. But the placement broke down 17 months after that, and the girl came back into care. There were new care proceedings, and a foster care breakdown because the foster carers were not able to manage her behaviour. So, had we assessed her wellbeing after 3 years, it is likely to have been 'poor'. By T2, however, the 5-year point, the girl had been adopted and was doing well in her new family. But that is not the end: other things will happen as she grows up, and the consequences of this difficult time may or may not come back to cause difficulties as she grows older. The point is to be mindful of this dynamic context and recognise that while things might have got better or worse for the children over our research period, there is always the possibility of further change.

The pie charts (Figures 11.1, 11.3 and 11.5) show the relatively high proportion of children doing well at T1, in both samples; but they also show that for the children in S1, across all three groups, that proportion declines over time whilst the proportion with poor wellbeing increases. On the face of it, this is a worrying finding, but there are also children whose wellbeing improves, or stays level at 'good'; and for children who are not in care, the 'successful' cases may be closed, so we lose them from the sample and cannot assess their wellbeing. It is also important to remember that for younger children, health, behavioural and special education difficulties may not be known at the start, but only become apparent later, and that all the children are growing up with all the 'ups and downs' that entails for all children. Some setbacks in (say) educational progress or emotional wellbeing during the teenage years could be regarded as 'normal'. The depth, extent and persistence of the difficulties are the key factors, and these may well have their roots in what the child has experienced before their care proceedings (Dickens et al 2019).

Case studies are used to show the complex challenges the children and their carers were often facing, whichever of the three groups they were in, and to illustrate the ways that the children's wellbeing might change over time. We have given pseudonyms to the children and changed non-material details.

In summary, the case files show the diversity of the children's circumstances and the depth of their needs; and give powerful messages that things are never certain, and can change, for good or ill, in unpredictable ways. We look in turn at the children in parental care, kinship care and long-term care.



### 11.3 Children living with their parent(s)

Figure 11.1: Wellbeing scores for children in parental care

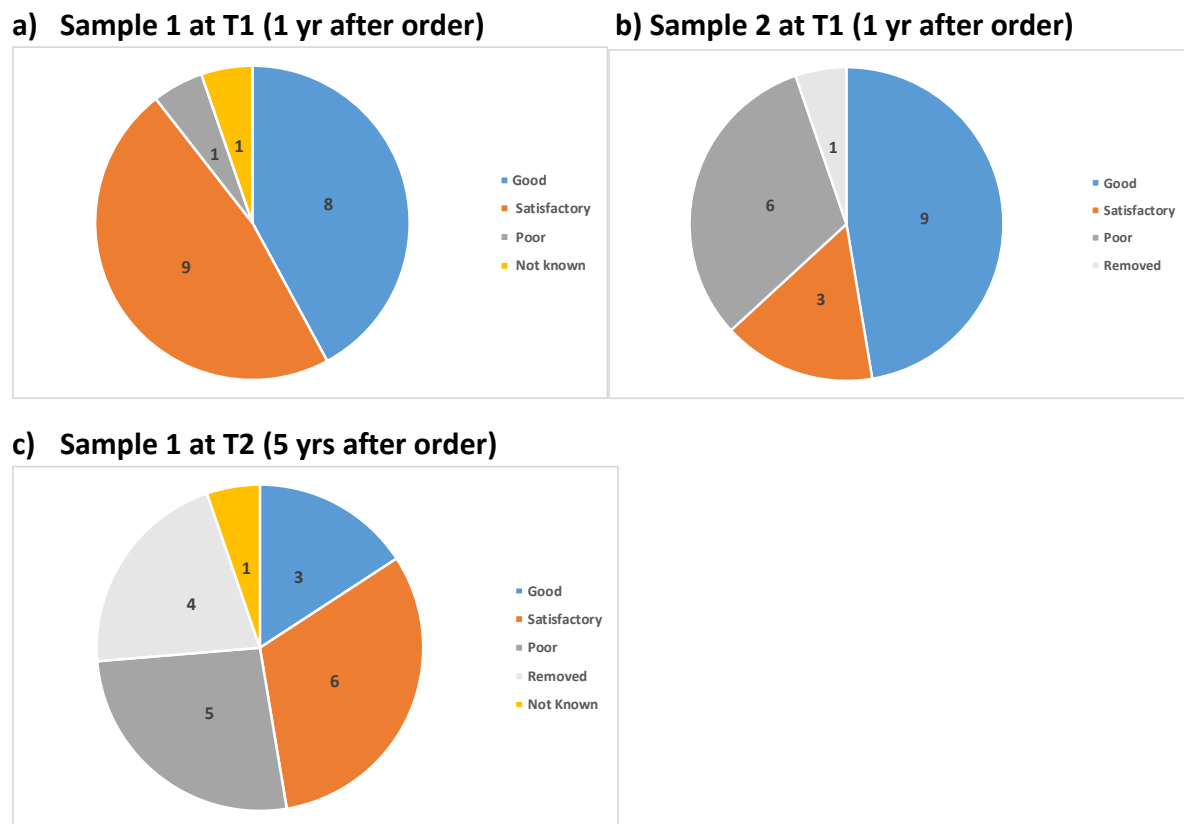
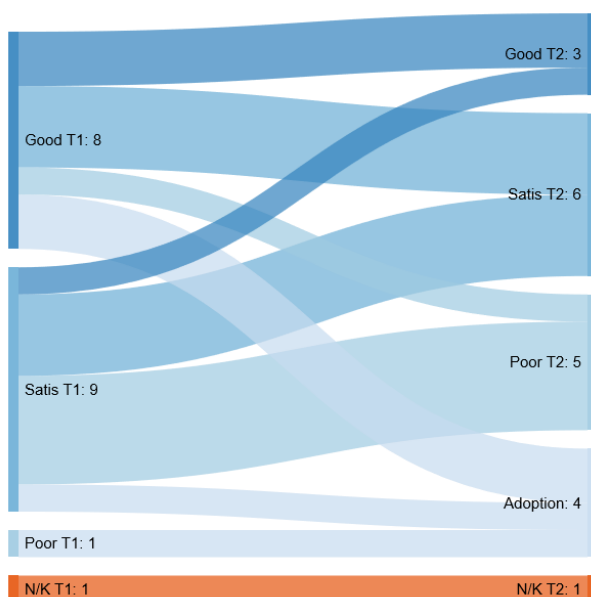


Figure 11.2: Children living with parents, trajectories between T1 and T2 (S1).



The greatest likelihood of poor outcomes over time are for the children who are returned to, or remain with, their parent(s). The pie charts show that for the children in S1, the

number we assessed as doing well fell between T1 and T2, from 8 to 3. The number assessed as poor rose from 1 to 5; and in four cases, the placement had ended and the children were now adopted or placed for adoption. The Sankey diagram, Figure 11.2, shows the direction of change – so, for example, of the eight children with good wellbeing ratings at T1, two were still assessed as good, three had fallen to satisfactory, one had fallen to poor and two had been removed from parental care and were in the adoption group.

As described in Chapter 10, cases ending with supervision orders were by far the most likely to return to court for further care proceedings: over 30% of the S1 cases that ended with supervision orders and 22% from S2, over the much shorter follow-up period, see Figure 10.9. The outcomes in the purposive sample are consistent with that overall pattern; and that in turn is consistent with other studies of reunifications, as noted in Chapters 4 and 10 (e.g. Farmer and Lutman 2012; Biehal et al 2015; Harwin et al, 2019a, b).

Of the four children who had been the subject of further care proceedings that had led to care and placement orders, two had been adopted by T2, and two were placed for adoption.

The fact that two of these children's wellbeing had been rated as good at T1, shows how hard it can be to predict how a case will fare in the future. The one case that was rated poor at T1 was a boy whose placement had already ended, and he was in foster care at the end of the first year; he had been adopted by T2 (2051, Aaron – see box below). There was another child who was the subject of further proceedings after T1, but these ended in another supervision order (3231). We assessed her wellbeing as falling from satisfactory at T1 to poor at T2.

#### Aaron 2051

Aaron, a white British boy, was aged 1 at the final hearing. Care proceedings were started as soon as he was born because of a long history of concerns about his mother's alcohol and drug misuse. One sibling was living with a relative, and two others were in care. Aaron remained with his mother throughout the proceedings, but under an interim care order. They went to a residential assessment centre. Aaron's mother engaged with the assessment and completed it satisfactorily. The local authority plan changed from adoption to a supervision order.

After the proceedings the family moved into a privately rented flat outside the local authority's area, but they kept the case. There were regular social work visits, health visitor support, a nursery place for Aaron, and offers of support from substance misuse workers, which his mother did not take up. She had another child. Nine months after the final order, the children were taken into police protection when their mother was arrested for being drunk and disorderly whilst the children were with her. The new local authority started care proceedings. By T2 the children had been adopted.

There was only one child whose placement continued to T2 who had a higher wellbeing rating than at T1, a white British girl whose parents were going through a difficult separation when the original proceedings were brought (6051). The mother had assaulted the girl and her siblings, but with her agreement the children went to live with a relative and were never in care. They returned to mother's care at the end of the proceedings, under residence and supervision orders. We assessed the girl's wellbeing as improving from satisfactory to good. From the research records it does appear that this family's needs were rather less severe than most of the other cases in the Study.

Of the other two cases rated good at T2, one was now aged 21 and a mother herself (5222) whilst the care application in the other case (1061) appears to have been based on some misinformation about the family, although there were legitimate concerns. It ended with a residence order and family assistance order. The parents engaged well with services in the year following the order, although post-T1 the father issued private law proceedings for contact, indicating that the parents had separated by this point and arrangements were not agreed.

Looking at S2, Figure 11.1b shows a more mixed picture than for S1, regarding the wellbeing of children a year after the order was made. The proportion of children doing well is slightly higher, but there is a far larger proportion of poor ratings. There are six cases rated poor, a third of the group. From the field researchers' notes and our check of the Cafcass data at the end of 2017, we know that three of these cases went into care proceedings after T1 (1771, 4621, 5721). Two ended with further supervision orders, and another with a care order although the authority also wanted a placement order. Of the other 'poor' cases, one re-entered the pre-proceedings process eight months after T1 (5611), although it does not appear that proceedings were taken; in another, where the child was placed with the father, they moved to another part of the country just before T1 to escape violence from the child's mother (4762) (there were subsequent care proceedings on two other children of this mother). The sixth 'poor' case had ended with no order because the local authority wanted a supervision order but the children were adamant they did not want a social worker (6671). A year after the proceedings, the girl we had chosen to follow was now 15 and living in a hostel. Also, one of the cases rated as good at T1 subsequently went into care proceedings, which had not been concluded at the end of 2017 (1812). There was also one case that had ended in a CAO to the mother and supervision order, that was successfully appealed by the local authority, and the re-hearing of the case concluded with care and placement orders – by T1 the child was placed with prospective adopters.

In summary, out of 19 cases in S2 where the proceedings ended with the child living with one or both parents, by the end of 2017 four had entered care proceedings again and one more had become an adoption case. We also know, from the researchers' reading ahead in the file, that there were cases that had been rated as good at T1 that were later causing concern for the local authority because of a decline in the parents' engagement to sustain the changes they had made (e.g. 1891, 2591, 2673). So, the pattern of worsening wellbeing over time that we saw in S1, was being repeated in the cases selected from S2.

Having said all that, there were cases that appeared to be going well, perhaps better than might have been predicted. An example is a case of a newborn girl, Lucy, that ended with a CAO to the mother and supervision order (3741). Care proceedings on an older sibling were underway when Lucy was born which ended with a care order, with the judge refusing the local authority's application for a placement order. Lucy has special needs, but her mother was engaging fully with services and she was doing well. This continued over the first year, with the mother attending mental health and domestic violence support services and taking her daughter to children's centres and playgroups. By the end of our research period the mother had applied for the return of the older child, but we do not know what the local authority or the child thought about that.

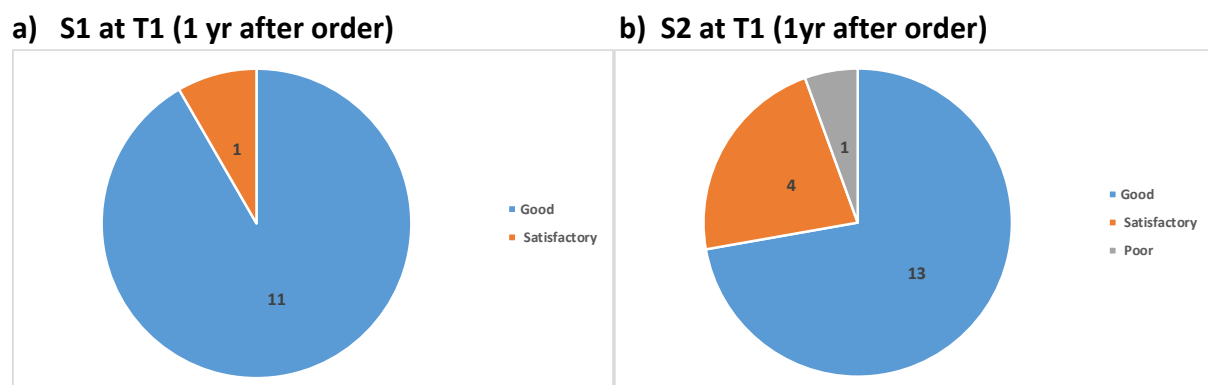
It might be argued that, with 'more support' or 'the right sort of support' or 'better support', more of the placements with parents might have gone well and lasted. It is hard to judge the quality of the services from the case files, although we can see when plans were not achieved or delayed, or when other agencies were not able to provide services that were requested, or not in a timely manner. But one cannot say that the local authorities did not try to support the placements, even if they had reservations about the likelihood of success. An example is a file note on a case from S2, Casey, where the court had made supervision orders against the local authority's recommendation of care orders (5721):

*'The LA ... have refreshed the care plan to support rehabilitation for the boys. This will include an appropriate level of support, supervision and guidance to manage ongoing concerns about neglect and M's capacity to sustain the changes that the judge highlighted in forming the judgment.'*

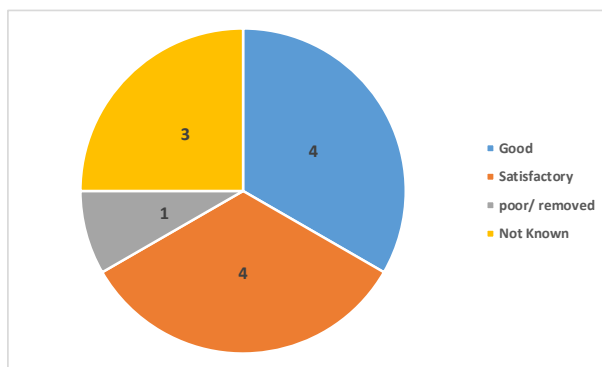
In this case, concerns arose about the mother's engagement very quickly after the full hearing, and continued throughout the first year, the duration of the supervision order. The local authority issued new care proceedings shortly after T1, which ended with a further supervision order. In Chapter 12 we consider in more detail the services provided to the children and their families during the follow-up periods.

#### 11.4 Children living with kinship carers

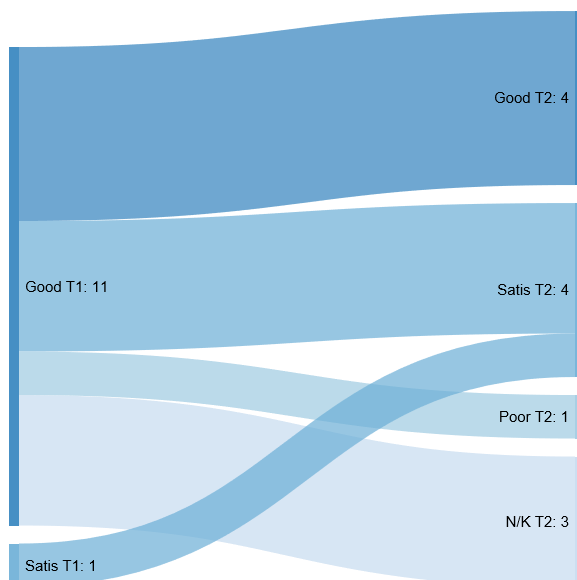
**Figure 11.3: Wellbeing scores for children in kinship care**



**c) S1 at T2 (5yrs after order)**



**Figure 11.4: Children living with kinship carers, trajectories between T1 and T2 (S1)**



Our Study found a high level of stability for the children placed in kinship care – only one special guardianship case in each sample went into care proceedings in the follow-up period, and seven had private law proceedings (one from S1 and six from S2, see Chapter 10). This appears successful and is consistent with other studies of special guardianship (e.g. Wade et al 2014; Selwyn and Masson 2014), but the findings from the case file study complicate the picture by exposing the considerable ambiguity that lies beneath the surface.

For the children in the S1 sub-sample in kinship care, the picture appears highly positive at T1, with 11 of the 12 cases rated as good (see Figure 11.3a); but by T2 that had fallen to four out of nine, although it is important to note that the LA files contained no information about three children, all of whom had been rated good at T1 (see Figures 11.3c and 11.4). The direction of change in wellbeing scores is shown in the Sankey diagram, Figure 11.4. It should be noted that we only scored wellbeing at T1 and T2, and as noted earlier it cannot be assumed that there were no variations within this period.

The absence of information on some kin carers is not surprising, given the intention of special guardianship orders to avoid continuing state intervention in the family and the separation of financial support from social work involvement. Also, where SGO carers live in another area, the local authority which brought the care proceedings no longer has responsibility for the child three years after the SGO is made (*Special Guardianship Regulations 2005*, Reg 5). However, these provisions limit the possibility of tracking the longer-term outcomes, and indeed of supporting the carers, unless they actively request help.

Only one placement had ended. This had been rated as good at T1, but by T2 the child was in foster care and his wellbeing was now assessed as very poor (Caleb, 6063 – see text box below). Of the other children, the wellbeing ratings of three had gone down from good to satisfactory, whilst five had stayed level – four at good and one at satisfactory. None of those remaining in the sample had improved over time, as shown in Figure 11.4.

#### Caleb 6063

Caleb was a white British boy aged 2 when care proceedings started, who was placed with his kinship carers during the proceedings. This was initially a temporary placement but the care proceedings ended with an SGO to them and a supervision order. At the end of the first year, things seemed to be going well but nine months later the guardians contacted the authority about Caleb's behaviour, saying it was uncontrollable to the point of becoming dangerous.

Concerns escalated quickly, with some extremely disturbed behaviour, including violence, fire-setting, and destroying the guardians' property. The guardians were 'physically and mentally exhausted' and had fallen into debt and ill health because of the pressures. Help was sought from CAMHS but there was a one year waiting list. Respite care was offered but never materialised. Caleb was referred to a clinical psychologist, but she withdrew, in her own words, 'because of the severity and complexity of this case'. The boy eventually moved to a new placement but this quickly deteriorated and he moved again. Care proceedings were started, ending with a care order. Caleb stayed in the second foster placement for three years before it came to an end. At the point our researchers read the file he had just started a new foster placement.

The picture for the S2 children did not appear quite as positive at T1, see Figure 11.3b. Out of the 18 cases, 13 were rated good, four satisfactory and one poor. The 'poor' case involved a child who was placed along with his brother with a family friend on a care order (5801). The plan was that the carer would apply to become a special guardian, but the placement broke down three months after T1. The boys went into specialist therapeutic foster care.

Whilst nearly all the kinship placements in our purposive sample were ongoing, there were signs of stress in a substantial number of cases. The file study showed that these might be caused by a range of factors, including the needs and behaviour of the child or the child's parents, tensions with the 'other side' of the child's family, difficulties in managing contact,

practical issues for the carers such as housing and finances, and the carers' own health. Any of these factors can change over time, as the child and the carers grow older. An example is the case of Samuel (1051), discussed more fully in Chapter 12. He was aged 7 at the time of the full hearing, placed with his maternal grandparents under an SGO. There were no concerns regarding their care of Samuel, but it was very challenging for them because of the needs of their daughter/ his mother. Overall though, Samuel was doing well and his wellbeing was considered good at T1 and T2. Post-T2 however, he was now 14, in a difficult relationship with his mother and unhappy in his placement.

The need for suitable support for kinship carers was acknowledged by local authority interviewees. As one put it:

*'... we have identified for a long time that post-adoption support is needed, but we are now also acknowledging that there needs to be post-SGO support in place as well ... because it's the same issue ... traumatised children, damaged children are being placed with SGO carers ... so yes, they do need the support and it is more than just having an annual review and stuff like that ...'* LA B SWM1

However, whilst the children in kinship care might well have similar needs to those in adoption, as the interviewee says – and one could add, to other children who have been through care proceedings, those in foster care and in parental care too – there are significant differences between the groups of carers. So services have to be sensitive to the distinctive characteristics and needs of different carers. As one interviewee put it:

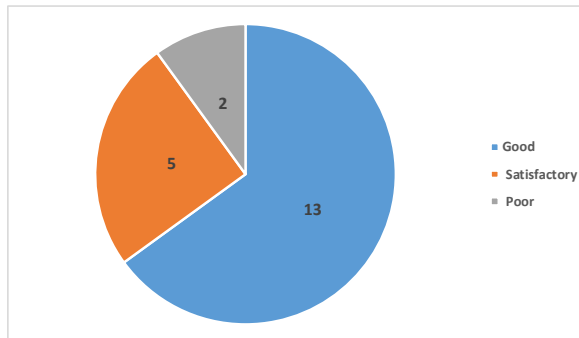
*'... what we have learnt over the time that we have been supporting SGO carers is that, because they are grandparents and aunts and uncles, they don't want to go through the mainstream sort of parenting courses [offered to prospective adopters], they feel that they are over and above that level and they don't want that. So we have to re-think that. So what we have put together is a training programme through the support group. People will generally go to support groups with those orders, they like the support from their peers, but we have also made it sort of educational too – so putting in things like child behaviour, education, looking at the support and services out there that they could gain, the sorts of things that often people who haven't parented for some time won't have, they won't be in touch with.'* LA A SWM1

Other research has highlighted concerns about the nature and level of on-going support to kinship carers, especially in the light of sometimes strained relationships with the child's parents and other family members (e.g. Hunt et al 2008; Farmer and Moyers 2008; Wade et al 2014, noted in Chapter 4). We look at these topics in more depth in Chapter 12.

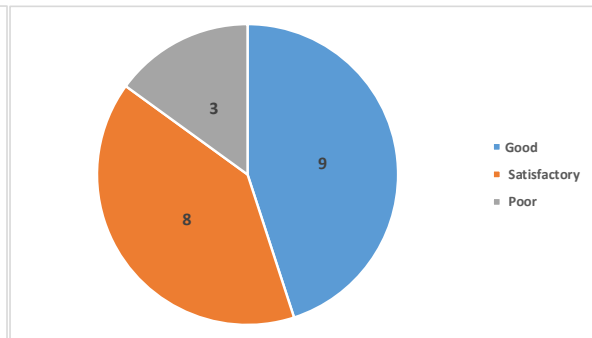
## 11.5 Children with care orders and plans for long term care

Figure 11.5: Wellbeing scores for children in long-term care

a) S1 at T1 (1 yr after order)



b) S2 at T1 (1yr after order)



c) S1 at T2 (5yrs after order)

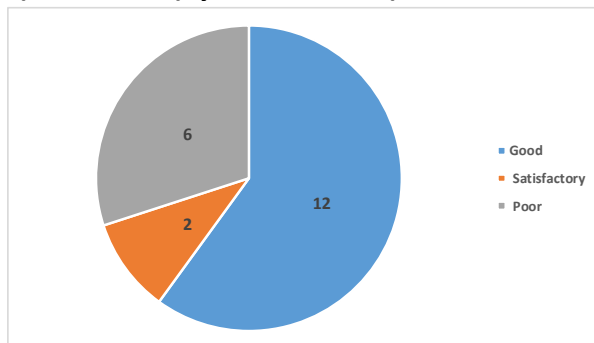
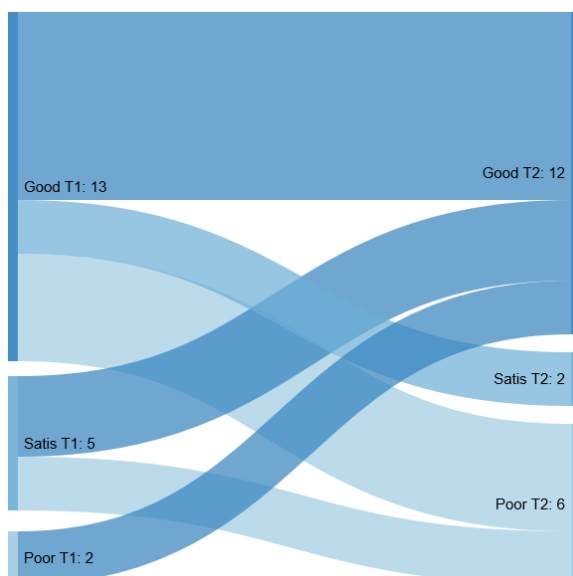


Figure 11.6: Children in long-term care, trajectories between T1 and T2 (S1)





The picture for the children with plans for long-term care is again a mixed one. Of the 20 children in the S1 group, 13 were rated good and only two poor at T1, see Figure 11.5a; by T2, there were 12 good and six poor, see Figure 11.5c.

Eight of the children had a fall in their rating, but five had gone up, and seven had stayed level, all at good, see Figure 11.6. So – and perhaps contrary to some of the beliefs about the failings of the care system – whilst eight had experienced a fall, 12, more than half, had either an improvement or on-going good wellbeing. For the 20 children in the S2 group, nine were rated good at T1, eight satisfactory and three poor – so, not quite as positive a picture as for the S1 cohort after one year, but even so, 17 out of 20 rated good or satisfactory, see Figure 11.5b.

Stable placements were generally associated with better outcomes, although stability itself does not guarantee all is well, as raised in Chapter 10 and discussed further below. Of the seven care cases that stayed level at good, five were in the same placement at T2 that they had been in prior to the final hearing (an example is the case of Hassan and his brother, 2122, summarised in the box below); and in the other two cases, the children had experienced long-lasting placements.

This raises interesting ‘chicken and egg’ questions, whether the stable placements led to the good long-term outcomes, or whether the children were in some ways ‘easier’ to care for and that explains the long-term stability. All of the seven children were aged 10 or under at the time of the full hearing, so in the age range where stable placements were more likely (Figure 10.8a); on the other hand, all were aged at least 6 when the proceedings started, so they had spent a significant period of their lives in the care of their birth parent(s). Some of the cases did seem more ‘straightforward’ than typical cases in the Study, but that was not the case for all: some of the children did have challenging behaviour, and/or there was challenging behaviour from the birth families, and in some cases the foster carers had personal and health difficulties to overcome.

#### Hassan 2122

Hassan was a British Asian boy aged 8 when he and his siblings (an older sister and younger brother) were admitted to foster care under s 20. Their mother had learning disabilities and mental health problems, and their stepfather was in poor physical health. The children had experienced chronic neglect, but they thrived in care.

The boys had one planned move to new carers during the proceedings and have stayed with them ever since. Their sister was in a separate placement. The boys are doing very well, and have benefited from CAMHS sessions, extra school support, life story work, and a stable, loving placement where the carers and parents have a good relationship with each other.

The picture is very positive, but even so there have been difficulties. By T2 it was reported that the boys were doing well in school, but they have needed extra help, and still do; and although family contact seems to work well, there have been difficulties over the years. There were concerns about the quality of the mother’s interaction with the boys and not keeping to contact arrangements. Contact with their sister dropped off as she got older,

but then there were concerns that she was using telephone contact inappropriately to get other members of the family to talk to the boys. After T1, their father, whom they did not previously know, wanted to have contact with them. The boys did not want this, but the social worker did give letters and photographs from him to them. They did not want to write back. The father put in a court application for direct contact, which ended with an order of no order, and after T2 he applied again.

At one stage the foster carers had been considering adopting the boys or becoming special guardians, but because of the uncertainty around contact they decided to stay with long-term fostering under the care orders.

Two of the apparently stable placements ended post-T2. Both of these were cases where the relationship with the birth family was problematic (an issue discussed further in Chapter 12). In one of them, the young person himself, now 15, attributed the disruption of the placement to the difficulties between the foster carers and his maternal family (2291). In the other (4231), both parents had serious mental health problems. Their behaviour at contact visits, and things they said in telephone calls to the children and the foster carers, had been highly unsettling throughout the whole post-court period. The parents had made court applications for increased contact, and post-T2 the court made an order to define contact. The placement ended just two months later, the reason given on the file being that the foster carers were moving abroad. This was unexpected and left the children, now teenagers, having to move placement after six years.

Whilst stability of placement is generally beneficial, sometimes changes led to improvements for the children – for example, 1042, Maisie, a white British girl, aged 8 at the full hearing, subject to a care order with a plan for long-term foster care. She moved to a planned long-term placement ten months after the hearing with her younger brother. This was still in its early days at T1 and assessed as satisfactory. After three years, however, Maisie moved to a new foster home because of conflicting needs with her brother. By T2 she had been there a year and was reported to be doing well. The topic of sibling placement and contact is considered further in Chapter 12.

There are two notable success stories of children whose wellbeing improved from poor at T1 to good at T2. Both of these were older children and it is unlikely that anyone would have predicted such positive outcomes. They raise intriguing questions about the interplay of services, individual characteristics and ‘chance’.

Kalu 2252

Kalu comes from a black African family and became the subject of care proceedings when he was 14, along with five younger siblings. There were many concerns about violence in the family, neglect, physical and emotional harm. The court made care orders on his siblings. The local authority had wanted a supervision order on him but the court made a care order.

The plan was then to move him to foster care, but he stayed with his mother. During the first year, his behaviour was increasingly out-of-control, aggressive at school and at home,

involved in crime, and refusing to meet with the social worker (but he did engage with the Youth Offending Team). Despite all this, he was doing well at school and obtained good GCSE results. Shortly after T1 he requested a move to independent accommodation. He engaged well with the support at first, but later this dropped off. Nevertheless, he got a part-time job and re-engaged with college, and got a place at university.

The other 'poor to good' case concerns Luke (4252), a white British boy who was 14 when proceedings started. He was beyond parental control, violent and absconding from placements. During the first year he had two residential placements, and then moved to foster care. Luke's first foster placement lasted just over a year, ending when he threatened the carer with a knife. But, despite that setback, he was actually making progress and moved to another foster placement which lasted until he was 18. He got a job and restarted college. A crucial thing for Luke was that he got a girlfriend whose family was very supportive; he ended up going to live with them when he was 18 and was still in that relationship three years later. This could be seen as lucky, but Luke must have had some qualities that enabled him to respond positively to that family's support – and he had been helped to develop them, or to rediscover them. One of the tasks of a parent or carer is to create the conditions for serendipity to happen (Gilligan, 1999).

Not all cases work out as well as that, of course. Some children experienced numerous moves, but also, stability does not necessarily mean that all is well. A case in point is Chad (5212), a white British boy who was placed in a specialist foster placement during the proceedings and remained there for five years. His wellbeing was assessed as good at T1. He said that he wanted to be adopted by the carers, but there were misgivings about this from the IRO and the social worker, concerned that the carers were over-controlling. Despite this, eventually a placement order was applied for and made – and two months later the placement broke down. Chad moved to a new placement but was unhappy there and his behaviour deteriorated. We assessed his wellbeing as poor at T2, but after that he moved to a residential placement, where things started to improve.

Chad's case raises the issue of how to respond to children's wishes, if professionals consider that they may not be in the child's best interests. This can of course be a challenge for all parents and carers, but for children and young people in care, possibly from difficult backgrounds with complex relationships with their own families, it can be especially demanding. This is demonstrated in the case studies where young people 'voted with their feet' and returned to their families. There were four cases in the purposive sample where the child/young person went (or stayed at) home against the local authority's plan. One is Kalu, discussed above; there is further discussion about family relationships in Chapter 12.

In other cases, the needs of the children seem to be too weighty for improvements to be achieved; an example is Jenson 4322, a white British boy aged 9 at the full hearing, who had been the subject of care proceedings twice before, both ending in supervision orders. His mother was a heavy drinker, and previous family placements had not worked out. This time he was in a foster care placement during the proceedings, which ended with a care order. Six months later the placement disrupted, and he went to live with an adult sibling, still

under the care order. At T1 this was going well, but later he became involved in a local gang, criminal and anti-social behaviour, smoking, drinking and going missing from home. His sibling was unable to control this. He moved to a residential placement, and by T2 he had been excluded from school, was absconding from the placement and violent. His wellbeing had fallen from good to poor. Post-T2, he was still there, but not in education, not engaging with any professionals, spending more time with his family and saw his future as prison.

## 11.6 Conclusion

The discussion of the three groups and the short summaries of a selection of the cases within each of them, have given a flavour of the range of issues that go into achieving, maintaining and assessing 'wellbeing' for children who have been the subjects of care proceedings. The needs of the children and their families raise great challenges for decision-makers in local authorities and the courts, and for the practitioners who work with them.

The case material sheds further light on **RQ 2** in particular, about the characteristics of children and proceedings where care plans are (or are not) fulfilled 12 months after the final order, building on the discussion in Chapter 10. (They also inform our answers to **RQs 4, 5 and 8**, which are discussed at the end of Chapter 12, when we have further information from the case studies and the interviews.) The overall statistics from the Study, and the picture from the case file study, show that for the three groups highlighted in this chapter, it is likely that the planned placements will have been achieved and still be in place at the one year stage; but there is a likelihood of placements with parents breaking down after that; placements with kinship carers being under strain; and the possibility that apparently stable placements for children in care might end, even beyond the five-year point. But what we can also see is how hard it is to predict longer-term outcomes: for example, of the four cases in S1 where the children had been removed from their parents by T2, two had been rated good at T1; and sometimes, cases where the future appears bleak can improve, unexpectedly and against the odds (the two 'poor to good' care cases, Kalu and Luke, are illustrations of that).

This is not meant to imply that outcomes are entirely arbitrary and beyond anyone's influence, rather to highlight the challenges of assessing whether a court decision was 'right' or not, according to what happens in the future. Courts, social workers and children's guardians are required to try to look into the future when making decisions or recommendations about the plans for children in care proceedings (Children Act 1989 s.31(3B)), and sometimes the current and future needs of the child might make planning for their long-term care relatively straightforward. At other times, decisions will be delicate or controversial (as in the example of Casey). What happens in the future *does* have a bearing on whether it was the right decision, but it is not the sole measure. Nothing is guaranteed, much is uncertain and open to change – the children's needs and wishes, the families' circumstances, the carers' circumstances, needs and wishes, and so on. A key factor will be securing the right services to support a placement. These themes are further explored in Chapter 12, through three specific issues that are often central to children's wellbeing –

family dynamics, sibling relationships, and the provision of support for them and their carers.

## **Summary**

An analysis of local authority case files for a purposive selection of cases allowed the researchers to score the children's wellbeing one year after the end of the proceedings (T1) and for the children from S1, 5 years after the final order (T2). Children were grouped according to the arrangement for their care after the order – placement with parents, with family or friends or in local authority care. Although the analysis is based on a purposive rather than a random sample, it allowed the identification of a range of issues relating to changes in wellbeing over time and the range of challenges facing children, their carers and local authorities. It was more common for children's wellbeing to decline than improve over time, but the reasons for this are complex and cannot simply be ascribed to the quality of care they are receiving – they may be to do with the child's emerging needs, the impact of previous ill-treatment, family circumstances, disengagement from services, or inadequate services (or any combination of those factors). Overall, the S1 children in foster care appeared to be faring better at T2 than the children with other care arrangements who were still in touch with the local authority. Local authority files contained little or no information on a quarter of the children in the kinship care group, 5 years after the end of the proceedings, either because they were not subject to a referral or because they lived outside the authority.

Case study examples are included but, as explained, cannot be taken as representative; rather, they are illustrative of the range of issues for the different groups of children and their carers.

## **Chapter 12 Achieving wellbeing for children after care proceedings: practice challenges**

This chapter builds on the picture given in Chapter 11, using further material from the case studies and interviews to highlight key messages for service planning and practice to help promote the wellbeing of children after care proceedings, whether they are placed in long-term care, kinship care or with their parent(s). It focuses on three specific issues that apply across those three groups, albeit in some different ways, and are at the heart of children's wellbeing – family dynamics and contact arrangements, sibling relationships (placements and contact), and the provision of support services.

### **12.1 Family dynamics and family contact**

Good quality contact with members of their family, and a sense that all the family are working together for their wellbeing, can help children to develop a good understanding of their background and offers reassurance that they are important and valued, even by people they may not see very often or even at all. Poor quality contact or being caught up in fraught or acrimonious family relationships, can be disturbing and disruptive for children, whether they are in parental care, kinship care or long-term public care. The case studies show that often it is not as simple as family links being *either* positive *or* harmful, they can be both, simultaneously. One of the key tasks for carers and for social workers is to manage these tensions, to build the strengths and mitigate the dangers. Even for the children who are placed with their parents or kinship carers, relationships between and with other members of their family can be complex and difficult – in fact, they can sometimes be especially difficult for children in these settings because the local authority has a more limited role and often expects the family to manage relationships and contact arrangements. Furthermore, some placements with kin were made despite overt parental opposition, and in others where parents did agree this was sometimes in the face of an alternative plan which they viewed as completely unacceptable, usually adoption. The number of cases in our sample that returned to court in private law proceedings is testimony to the ongoing tensions (see above, section 10.6 and Figure 10.9). All this underlines the need for taking a holistic view of family relationships when taking decisions about contact.

Positive links with parents and other family members (grandparents, aunts and uncles, siblings) are considered generally to be beneficial for children, and there are requirements in law to consider family placements (Children Act 1989, s.22C(3)(b) and (c)) and promote family contact (s.34(1) and Sched 2, para 15(1)). Local authorities cannot refuse a parent contact with their child in care, except on a very short-term basis, but have to apply to court for an order to do so (s.34). However, it may not always be easy to square these principles with the best interests of the child, and the case studies show some of the challenges.

Relationships between family members could be positive, but in some cases were strained to the point of hostility, making it hard to achieve and sustain a beneficial climate for the children. It was not unusual for kinship carers to face challenging tasks in maintaining a good

relationship with the child's parent/s (often their daughter) and managing contact arrangements. The two case examples below illustrate some of the challenges. Both involve kinship placements; in Samuel's case, the challenges were for the grandparents in managing their daughter's behaviour; in the case of Kayley and her siblings, 5531, the challenges are to do with entrenched family enmity.

#### Samuel 1051

Samuel was a white British boy, aged 8 at the final hearing. The case was in S1, and he was 14 by the time our researchers read the file for the purposive study. The concerns that led to the care proceedings were about his mother's alcohol misuse and violent relationships, and he had an older sibling who was already living with his maternal grandmother. Samuel came into care under police protection and was placed with the grandmother. He stayed there under s.20 during the proceedings, which ended with an SGO to her.

There were no concerns about the care given by his grandmother and her partner, but there were occasions when they had to call the police because of the mother's behaviour towards them. Over time they had to take out two restraining orders. There were ongoing concerns about the quality of contact. There were times Samuel's mother was abusive to the grandparents, intoxicated, violent, and there was an incident when she encouraged Samuel to steal; but he appeared to enjoy contact when he was younger.

When the researchers read the file post-T2, Samuel's relationship with his mother was more difficult. He had reported that his mother had been abusive towards him in contact, and his mother's support worker had reported that he was being abusive towards her, asking her for money, hanging round her flat with older children and drug users, and that his friends might have been stealing from her.

#### Kayley 5531

This is a case from S2. Kayley was one of five siblings, white British, aged from 2 to 12, who lived together with their mother. Previous care proceedings had ended less than six months before the proceedings included in our study, with supervision orders on all five. There were longstanding concerns about the mother's mental health and alcohol abuse, the mental health of her partner (the father of the two younger children) and domestic violence between them. Things deteriorated again after the proceedings ended, and the children were placed with their maternal grandparents. The local authority took new proceedings, and the plan at the full hearing (supported by the children's guardian) was that the children would stay with them under SGOs. However, the father of the two younger children opposed this, wanting his children to live with him and his parents. There was a hostile relationship between his family and the maternal family.

The decision of the court was that the three eldest should stay with the maternal grandparents under care orders, and the two younger children should go to their father under child arrangements orders for residence and for contact with the grandparents, along with a supervision order. The judge's view was that an SGO to the grandparents,

giving them parental responsibility which they could exercise to the exclusion of the parent(s) would have been more of an interference in the father's rights than the care order, because the grandparents could have used it to limit his role and his only redress would have been to seek court orders. The judge was critical of the social work assessment behind the SGO recommendation but acknowledged that placing the children with the grandparents had prevented them being removed from the family.

A year later, T1, the placement of the younger children with their father and his parents was continuing and going well. The placement of the older children had ended as a result of allegations of abuse, and they were living in separate foster care placements. The children had appeared to enjoy contact with each other over the year, although the meetings had been marred by constant arguments between the adults. Contact between the siblings was continuing.

Some parents undermined their child's progress and the stability of the placement by their behaviour or what they said during contact visits, or in telephone calls and messages. This may or may not have been intentional, but their behaviour had a disturbing effect on their children. Two examples were mentioned in Chapter 11; a further example is Matthew 3731, a 10 year old white British boy placed in long-term therapeutic foster care under a care order. (The court had refused the local authority's plan for an SGO to his maternal aunt and uncle because of the strained relationship between them and his mother.) At first, he was having supervised contact with his mother once a month and monitored telephone contact once a week. Matthew was said to have a strong attachment to his mother, but he was confused and unsettled by some of the things she said, such as that she would be going to court to take him back, that she hates the carers, that she does not like the social worker. She was regularly pushing for more frequent and longer contact, but missed some meetings and behaved inappropriately in others, including threatening the social worker and the carers. Eventually contact was suspended when Matthew said he did not want it anymore, but he continues to have regular contact with other members of his family.

But it is important to recognise that there are cases with smooth and successful contact arrangements – for example, 3251, a black African family with two children who were placed with their maternal grandparents under an SGO. A reunification attempt during the proceedings did not succeed. In the judgment, the judge said she would not define contact, *'but I make clear that, for the present, the grandparents are being charged with the serious responsibility of supervision. I will expect contact to be and to remain informally supervised or facilitated by a member of the family, though I make no order to that effect.'* The children had contact with their mother twice per week, with the grandparents arranging, supervising and supporting it. She spent Christmas with the family, and by the end of the first year she had started occasionally to pick the children up from school and walk them to the grandparents' home. It was noted that the children looked forward to seeing her and referred to her with 'warmth and affection'.



There were cases where difficulties in contact were addressed and things improved. One example was a family of three white British children, 3771, who were living with their maternal grandmother under s.20 before care proceedings started. The proceedings ended with an SGO to her, and a supervision order. There was frequent contact between the children and their mother, but she did not always keep to the boundaries that the grandmother had put in place, for example making last minute demands for contact by text, turning up at the children's home outside the agreed times, and saying inappropriate things to them. The social worker kept in touch with both parties to help resolve conflicts and even though there were continuing tensions, there was progress over the year: the family managed a weekend trip away together including the mother, which went well. Another successful case is 1171, Toby, described in the box below.

#### Toby 1171

Toby is a white British boy who was aged 1 at the final hearing. Care proceedings started when he was born. He went straight from hospital to a foster placement under s.20, there was no interim care order. At the end of the proceedings he was placed with his maternal uncle and his partner under an SGO. There was no supervision order, but an order for contact three times per year, arranged and supervised by the special guardians.

As Toby grew older it became clear that he had significant developmental delays and behavioural difficulties. Furthermore, the relationship between Toby's mother and his uncle was very difficult. She had made threats against him, but things seemed to be calming down and after six months the local authority closed the case, leaving the mother and the uncle to make the contact arrangements between themselves. Halfway through the T2 period, the case was referred back to the authority because of problems with contact. This was still happening three times per year, but the prospect of it was terrifying for the boy, now aged 4 years. He would beg not to see his mother and it took two weeks for his behaviour to recover afterwards. It was reported that he was upset because his mother would tell him she was his 'real mummy'.

An assessment for special guardianship support was undertaken. Toby had a close relationship with his guardians, was happy and integrated into their home. He received one-to-one support at school and OT support, but he was confused as to who his mother was. He did not have a life story book or any photographs of her. When the social worker spoke with Toby's mother, she shared her feelings about contact: anxiety that it occurred in the area of her previous drug life, the expense of the visits, the unsatisfactory nature of the venue and her sadness that Toby did not know her and called her 'that lady'.

All parties were helped to understand contact and manage it better, and it improved greatly. The life story book was done, the special guardians were helped to talk with Toby about his 'tummy mummy', and they accepted other help to deal with his behaviour and special needs. His mother was helped to play and talk more appropriately with him.

Local authority interviewees were conscious of the demands of contact and family relationships, particularly for special guardians:

*‘... contact arrangements can make or break a placement because, you know, birth parents can make that very, very difficult to the point where vulnerable auntie or uncle can’t manage to care for the child because contact is so complicated.’ LA B SWM6*

There was a sense amongst the interviewees that the reasons for attaching supervision orders to special guardianship orders were often to do with the courts wanting to ensure that the local authority stayed involved to manage contact and help with the family dynamics:

*‘... because the contact is so complex with some of these families, and quite dangerous, it is a means of protecting the new carer with our involvement, to make sure that the contact is actually going to be all right and that they are actually not going to be hurt, they are not going to be harmed ... we have got some incredibly difficult families, parents, who couldn’t care less about breaking the law.’ LA C SWM1*

*‘[T]hese special guardians are being expected to not only deal with all the family dynamics of caring for this child, but also they are managing contact and stuff like that, so I do feel those supervision orders are used ... to provide embedding support for that special guardian to look after that child – whether that’s about making sure they are getting the financial resources ... getting the emotional support, getting the training, getting support to be able to manage the contact.’ LA B SWM1*

One IRO complained about the impact that comments from judges could have on the future of a case and the parents’ willingness to work with the local authority (quoted at greater length in Chapter 9): *‘... when the judge says ... “it is up to the local authority, but it may be in the future that an increased level of contact can be considered”, what the family hear is, “You will get more contact.”’* (LA C IRO1). From the IRO’s perspective, this is likely to create extra work for the local authority to deal with the demands, upset for the child and disappointment for the parents. She called on judges to *‘think through’* the impact of their comments.

The most likely outcome by the end of the first year for both mothers and fathers was that they would be having direct contact in accordance with the frequency agreed at the final hearing; a few parents were having contact more frequently than agreed, but a larger proportion were having less frequent contact than agreed. This likelihood was greater for the children in kinship care, which may be a consequence of the expectation that families should, wherever possible, arrange contact themselves (as noted in Chapter 9) and the realities of weak or strained links between the mother or father and the carers. The case of Damisi, discussed in section 12.3 below, shows how contact can ‘fade away’ even when there is no overt hostility between the different parts of the child’s family.

The importance of family connections for the children and young people should not be underestimated, even if these do not appear to benefit the child. Older children and young people, who are able to take themselves back to their families, might decide to do this (although in this sample very few did). Kalu, the young man discussed in Chapter 11, is an example: he refused to go to a foster home and eventually moved to independent living and

became a university student. A case from S2 shows similar features. This was Veronica, a teenage girl who often went missing from her foster home, going to her family, and resisting sustained attempts to stop this, including two recovery orders (2514). Eventually she stopped returning to the foster home at all, and later applied, successfully, for the care order to be discharged. Throughout this period the local authority frequently did not know where Veronica was; she refused to provide an address and was in many respects vulnerable. Had she come to the attention of the police or been seriously harmed, the local authority and social workers could have expected substantial criticism, even blame. Yet, fortunately, that did not happen and at the end the judge praised the local authority for the balanced way they had managed the case.

This case, and that of Kalu, stand out as rather remarkable stories, that show the tenacity of the young people and the challenge for social workers to work with them, respecting their autonomy but also mindful of their safety and wellbeing. For both these young people, success and stability at school appears to have been a vital factor for their wellbeing. Another shared factor is that they both came from Black African families, and it may be that there are messages here about sensitive working with children and families from BAME backgrounds, recognising the strengths of their family and cultural ties. The cases highlight the importance of thoughtful case work and individual responses, but there are institutional risks in this work, for example heavy criticism in the press and by Ofsted if things do not go well.

#### **Messages for practice: family dynamics and contact**

- Families can be a major source of support for children and for their parents, and the default position, in law and practice, is to try to work with them to help them provide that support.
- Family dynamics are complex, and all the more so where there have been care proceedings and children are placed with kin. Planning and deciding about continued contact require a holistic assessment of its impacts, both positive and negative.
- Special processes - family group conferences and family network meetings - can be effective ways of promoting family involvement; but the essential requirement is committed relationship-based, direct practice with children, carers, parents and other kin.
- Parents and other family members have their own needs, wishes and interests, and these may not always be compatible with the best interests of the child. Conflicts and tensions are likely, between any of the parties – between the parents, parents and kinship carers, parents and foster carers, between different parts of the extended family. Clear expectations, suitable support and monitoring are essential.
- Local authorities should be cautious about too quickly leaving contact arrangements down to the family (or indeed, leaving too much of this down to foster carers or kin carers).
- Courts need to be mindful of the 'mixed messages' that judgments might sometimes give about contact and possible reunification.

- Skilled social work, and specialist help if necessary, can help parents to build good relationships with their children, even when the children do not live with them; and can help children to understand things better, and carers to support them.
- Social workers have to be mindful of the wishes and autonomy of children and young people around family contact, but also aware of their safety and wellbeing.
- Agencies need to support social workers to work in skilful and sensitive ways, in these demanding cases.

## 12.2 Sibling placements and contact

Chapter 10 described the findings on sibling placement at the end of the proceedings. Children who had siblings were more likely to be living with some or all of them if they were placed with their parents or kin, than with non-related carers. It was, not surprisingly, less likely for children from large families to be placed with all their siblings, but overall there was a high rate of placements with at least some siblings. But as noted in Chapter 10, children were likely to face more separation from siblings in the future, for a variety of reasons. The case file study enabled us to see how local authorities responded to the challenges of maintaining relationships between siblings.

Sibling relationships have been described as some of the most important relationships in a child's life, likely to outlast their relationships with their parents. For children coming from backgrounds of adversity the relationships are likely to be more complex than for other children, both potentially more intense (having 'looked out' for each other) and perhaps also more competitive, controlling or even violent (having been witnesses to or victims of such behaviour, or having competed for attention and safety). This complexity is well known from previous studies of foster care and adoption (e.g. Rushton et al 2001; Meakings et al 2017). For children in care, and particularly children who are adopted, sibling relationships can be disrupted, even ended, possibly to their benefit but also often a cause of sadness (Children's Rights Director for England 2014), as noted in Chapter 10.

Monk and Macvarish (2018), mentioned in Chapter 10, argue that in care and adoption proceedings the significance of sibling relationships is 'easily and routinely outweighed by other considerations', and suggest that it is an 'overlooked relationship'. Their report is based on a study of the legislation and case law, interviews with practitioners and the views of young people on the Family Justice Young People's Board. Our study has the advantage of the detailed data about the cases, through the proceedings and the follow-up period, as well as our interviews. It is hard from that material to agree that it is an overlooked relationship in practice; on the contrary, it appears as a complex, demanding issue, raising many challenges for practice and decision-making, and taken extremely seriously by all involved. Our study also suggests that kinship care and indeed, parental care, should be considered in studies of sibling relationships, alongside public care and adoption.

The variety and complexity of 'sibling relationships' stands out – children might be full or half-siblings, there are also adoptive siblings and foster siblings, siblings may never have met

as was the case for Damisi, discussed below, there could be very great age differences, there might be siblings in care, kinship care or adopted whilst others might be at home, some might be 'young carers' for their siblings, some adult siblings might be special guardians, some young people might behave harmfully towards their sibling(s). Despite the complexity the predominant view was that siblings should be kept together if possible:

*'I think it is very difficult to sort of in one sense really ever bring yourself to a point where you think they should be separated ... these children have already been through so much and to separate them, just feels almost unbearable at times.'* LA B SWM7

However, some decisions about whether or not to keep siblings together are not made by the local authorities, but by families themselves, making their own arrangements, and by the courts, as in the case of Kayley and her siblings described earlier in this chapter; and interviewees recognised that keeping siblings together might not always be feasible or in the best interests of one, both, some or all of them. There were contrasting views about the priority to be given to keeping siblings together in long-term care, if one (or more) were young enough to be considered for adoption. One interviewee emphasised the perceived advantages of adoption in terms of permanence and greater stability:

*'... if you have got three children who are four, nine and ten, then should we be keeping those together or should we be saying the four year old should have the opportunity to be adopted? ... there is a push to keep them together and sometimes that is not the best option for these young people.'* LA B SWM1

But another interviewee, painting a similar scenario, came to the opposite conclusion, stressing the priority of sibling bonds:

*'If you have got a sibling group ... three, six and eight years, we do only go for – because we don't want to separate the siblings unless there are extenuating circumstances .... we look for a long-term foster placement. I know it is best for the three year old because you always want the sibling groups to remain together, because that bond is quite strong and we don't want to break that bond.'* LA C SWM4

Even if there were differences of opinion, all interviewees recognised the importance of the issue and took it very seriously. There were repeated references in the interviews and the case files to the CoramBAAF 'Together or Apart' good practice guide and assessment format (since updated to 'Beyond Together or Apart': Beckett 2018).

Some interviewees thought that there was a pressure from the courts to keep siblings together and to complete the necessary assessments during the proceedings, but this might not always produce the best results, because the children's needs might not come out until later, when they were in a longer-term placement:

*'... there are children removed from home and they are placed with foster carers, they are placed within those 26 weeks, it is a honeymoon period, so it may seem like everything is okay, they get the manager to say 'all of them together' ... but a year on we are seeing now*

*the children are settled so their true behaviours are coming out, as they are able to express their true behaviour...*' LA C SWM4

One of the cases in S1 ended with care and placement orders for two siblings, one aged 3 and the other born during the proceedings (5371). These orders were set aside when the mother appealed them, on the grounds that the court report had not addressed the impact of separating the siblings. (The local authority changed its plan to support reunification to the mother, and the appeal ended with supervision orders.) These children were still together with their mother at T2, but a number of the case studies showed how placements might become untenable over time because of the children's incompatible needs.

An example is 1042 Maisie, aged 8 at the final hearing, mentioned in Chapter 11. She moved to a new foster home after three years, because of conflicting needs with her brother, and did well after that. Another example is 6082, Robbie, a white British boy aged 14 at the final hearing. He was placed in long-term foster care with his older sister. They both had special educational needs, but his sister had greater behavioural problems, and after T1 she moved to a new placement. Both children were happier in separate placements and separate schools, with monthly contact. The challenges are seen especially sharply in case 4401, Felix, one of the cases where the care plan was adoption.

#### Felix 4401

Felix was a white British boy was aged 4 at the final hearing. The proceedings ended with care and placement orders on him and his younger sister. Seven months after the full hearing they were placed together in a prospective adoptive placement. This disrupted after a short period of time because the carers could not cope with the children's behaviour.

The children were placed together with experienced foster carers, and the local authority considered separate placements and changing the plan to long-term foster care. They commissioned a child psychologist's report, which suggested they should be separated. This led to an application by the mother for revocation of the care and placement orders and the return of the children to her. Another psychological report ordered in the proceedings disagreed with the plan of separation. The mother's application was dismissed. But, a year later, it was agreed that separation would be the best way forward, and Felix moved to a separate foster placement.

Felix was able to receive specialist therapy, became more settled and eventually had good, occasional contact with his sister, who had been adopted by her carers. Post-T2, the case records describe positive school reports, improved social skills, and that he was getting on better with his peers.

One of the other adoption cases shows a similar pattern (1231). This involved two girls aged 4 and 3 at the end of the care proceedings, with a plan for them to be placed together for adoption. It took over two years to find an apparently suitable prospective adoptive family. Then, eighteen months after the girls were placed, the carers asked for the older girl to be

moved because of difficulties with her behaviour, which included violence towards her sister. Later it was reported that the younger girl was doing ‘incredibly well’, and she was adopted just a month before T2. The older girl was reported to be doing well in foster care. Their relationship had improved since they had separated, and there was positive contact between them. Difficulties in finding prospective adopters who would take siblings together was also a reason why adoption plans might be changed, so that they could stay together in long-term foster care (5072). The data reported in Section 10.4, above, indicated that disproportionately more children in sibling groups with an adoption plan were not placed for adoption.

If children cannot be placed together, the next option is to consider contact:

*‘When I see children, and I see them by themselves, and we kind of talk, most of them will just say that they want to see their siblings, so that is the most important thing, parents often not, but siblings are really important to them.’ LA D IRO1*

Contact might be direct (face-to-face and/or telephone or Skype), or by ‘letter box’ arrangements. Geographical factors can play a large part in how contact develops, as well as the attitude of the carers – for example, Hassan’s sister was able to call into the boys’ foster home on the way back from school, a consequence of the placements being close as well as the openness of the carers.

Contact can be reassuring for children, but it can also be upsetting, even distressing, reminding them of past difficulties and why they cannot live together. One of the cases in the purposive sample was Harry, a white British boy aged 12 at the final hearing, who had come into care because his adoptive placement had disrupted (3521). He was a troubled young man whose behaviour could be very aggressive, violent and dangerous. He had lived in his adoptive home with his brother and had regular contact with another sibling in a different adoptive home. Questions about future levels of contact between the siblings were contested in the care proceedings, with the children’s guardian wanting a higher frequency than the local authority proposed. Eventually it was agreed that he would have monthly contact with each of them (separately). This did continue, but it could be very painful for him; there was report of him ‘trashing’ his bedroom after one of the meetings.

For kinship care cases where siblings were living with different relatives under SGOs, the general expectation was that the carers would sort out the arrangements between themselves. This is the same as the general approach to special guardians organising parental contact, but as with parental contact, it is not always straightforward. Family hostility, or lack of close bonds, children placed with different parts of the family (for example, with the relatives of different fathers), distance, pressures of time, and possibly a lack of understanding of the long-term significance of sibling bonds, could all play a part in why sibling contact might never get established or tail off. But the local authority may not have any powers or responsibilities to intervene in these cases, if all the children are with special guardians and there are no other orders or safeguarding concerns.

As an example, there was one case involving four children, where one went to the maternal grandparents on an SGO, two to the paternal grandparents on SGOs, and one to a maternal aunt on an SGO (5161). There were no supervision or contact orders. Social work support stopped after a year. Later there was a re-referral because of concerns about the eldest child's welfare, but there was no role for the local authority to specify any arrangements for contact between the siblings.

The interviews and the case studies suggest a number of tips for practice. One is the importance of direct work with the children to prepare them for any changes of placement and contact arrangements, but equally important is working with the carers, and arranging specialist support for *them* if necessary, to assist in their understanding of the children's needs and in making effective arrangements for contact to work well. One interviewee observed that *'it only takes one foster carer to be a bit of a weak link and the whole thing falls apart'* (LA D IRO1). Leaving it up to foster carers or kinship carers to arrange contact might not be the best way to ensure it is sustained or works as well as possible for all involved. (An example is the case of Damisi, discussed in section 12.3.) Equally, it was seen as potentially hard to work with adopters: *'adopters do what they want and quite often contact kind of goes out the window'* (LA D IRO2); but if there are no court orders, social workers will have to rely on discussions, reasoning and assurances of support to enable it to happen.

#### **Messages for practice: sibling relationships**

- Sibling relationships are usually important and beneficial for children, but for those who have been through care proceedings (whether they are now in public care, kinship care, adopted or with their parent/s) it is important to recognise the impact that backgrounds of adversity are likely to have on those relationships; ongoing and skilful support for carers may be necessary.
- Separation of siblings may take place at various points in time. It may occur before children come into care, because of families having made their own decisions about who should look after the children; or at the point of entry to care, perhaps based on the size of the family and the availability of carers at the time; or later, if it becomes apparent that the children's needs are not compatible in the same placement.
- The CoramBAAF 'Together or Apart' guidance is a well-known framework for assessing sibling relationships. Social workers should consider the quality of the relationship, the support that is necessary and available, and the likely consequences of separation.
- Timeliness is crucial: assessments should not be rushed, and it is important to recognise that relationships may change, for better or worse, as time goes on; but equally, undue delay can hinder the chances of the children ever reaching a stable placement.
- Local authorities should plan ahead, in their recruitment of foster carers and prospective adopters, to find suitable placements for sibling pairs or groups.
- Local authorities may not always have legal powers or responsibilities to specify what contact should take place; in these cases, social work skills of discussion and support come to the fore.



- Direct work with the children can have a vital part to play in helping them understand and, if/as appropriate, maintain sibling relationships (by living in the same placement or by contact arrangements).
- Direct work with the carers, parents and other members of the child's family may also have a vital part to play in helping them understand and, if/as appropriate, maintain sibling relationships.

### 12.3 Services

This section looks at the services local authorities provided, or sought to arrange, with the aim of supporting children and their carers and maintaining the placements – whether those were with foster carers, kinship carers or parents. There are similarities between those groups, but also differences in the support they are likely to need. The case studies and interviews have already indicated the range of issues, so this section focuses on four high-profile topics: the role of local authority children's services departments and social work case work; mental health services for children; education; and leaving care.

Children who have been through care proceedings, wherever they are placed, are likely to need considerable help given their experiences of abuse and neglect, environments of drug or alcohol abuse, domestic violence and parental mental ill health. They may also have genetic conditions and high-level health needs. Help is likely to be needed in the key domains of physical and mental health, education, behaviour, emotional wellbeing, relationships and social skills; and also, help with understanding family contact, their background and their current situation.

For kinship carers, the key needs are often practical, in terms of managing family relationships and contact, help with the costs of raising the child/ren, sometimes help with housing, and sometimes support for their own health needs. Some showed great courage and commitment to keep the placement going, in the face of very challenging behaviour and/or personal circumstances, which is reflected in high rates of stability (see Wade et al 2014). Kinship carers might also need help in working with professionals (e.g. teachers, health visitors, medical specialists, therapists) and other agencies. Kinship carers sometimes need help in understanding how best to help and parent children who have experienced major prior adversities, as is the experience of most of these children, and may not know what help they can ask for.

For parents who have resumed or retained care of their children after care proceedings, key needs are likely to be for ongoing support with parenting skills, help to sustain the progress they have made in tackling their problematic use of drugs or alcohol, help to remain free from abusive relationships, possibly help with budgeting and housing, and engaging with professionals. They may not always agree with the 'needs' that a professional might identify.

For foster carers, the main needs are likely to be for support in helping the child with their behaviour and relationships. One would have hoped that all foster carers would have a deep

understanding of children's needs and an aptitude for working with professionals, but the evidence of the case studies was that some needed help in these areas. There were serious dilemmas for social workers when they found foster carers to be non-cooperative, even obstructive, but the child appeared to be doing well, and said they wanted to stay (as in the case of Chad). But there were other examples of great dedication from foster carers, some experiencing serious illness or bereavement, or facing extremely troubled behaviour from the young person, but committed to keeping the placement going (these qualities of foster carers have been well documented in previous research, for example Sinclair et al 2004, 2007).

This commitment from foster carers is reflected in the rates of placement stability reported in Chapter 10, notably that out of the children on care orders aged under 10 at the final hearing, half had only one placement in the follow up period (up to 31 March 2016 or they left care); and for those aged over 10, more than half had only one or two placements in that period. As noted in Chapter 10, stability does not *guarantee* the children are doing well, but the case file data adds to the picture, showing some positive outcomes (e.g. Hassan). The rather negative views of the local authority interviewees about placement availability and suitability recorded in Chapter 10 do not portray the full picture, perhaps reflecting the human tendency to remember things that do not go well rather than those that do (e.g. Kensinger 2009); but also a mentality exacerbated by the professional context described in Chapter 2, of critical Ofsted inspections, court judgments and press coverage.

### *Children's Services and social work*

Regular social work contact and visiting is a key to knowing and supporting children and their carers, and monitoring the child's welfare, wherever they are placed. However, local authorities have no specific duties for children on CAOs/ROs; their position is no different from other children 'in need' even where the order was made in care proceedings. There are statutory duties for regular visits to children in care, but not for children on special guardianship orders or supervision orders; the frequency of visiting, if any, will depend on whether or not there is considered to be a need for a 'child in need plan' or a 'child protection plan', and what that plan says. Local authority children's services departments have responsibility for providing or commissioning and co-ordinating a range of assessment and support services for children in care, care leavers, children in need and their families, and special guardians (e.g. counselling and advice, parenting groups, children's activities, housing and financial support). For children in care, they also have responsibility for placement finding and support, arranging and supporting contact and family links.

Direct work, including life story work, can help children to understand their background and circumstances, and help them settle in their new home (or later, help to stabilise it); it can also help the carers (parents, kin, foster carers and adopters) to understand better the child's behaviour, and respond more skilfully. Major challenges to doing such work arise because of heavy workloads and limited resources, creating pressures to close cases unless there is a legal requirement or clear need to keep them open. Cases where the children were in care or on supervision orders were kept open. Parental or kinship care cases might

continue on child in need plans, but without an order there was a likelihood that they would be closed quickly, as noted by the local authority solicitor from LA F quoted in section 9.4 above.

There were different views about the ‘benefits’ of a supervision order to ensure that special guardianship cases were kept open, at least for the duration of the order. The view of an IRO from LA D was quoted in Chapter 9, that *‘the way that things are at present, if there isn’t a legal onus on the local authority to do something, they won’t do it’*, but there was a range of opinions from other workers in the same local authority, showing how contentious an issue it is:

*‘... our view is that if you are assessing that somebody is able to care for this child, why on earth would we want a supervision order, which is just to advise, assist and befriend, which is part of the SGO support anyway – so why would you need a supervision order?’* LA D SWM4

*‘... occasionally we will apply for a supervision order alongside the SGO ... [if we think] the SGO is the right plan, but it is going to need some fairly robust support, and we also need to try to – not that we have any power to – encourage the family to engage with it. And by kind of tying ourselves into a supervision order we also tie the family into it.’* LA E SWM1

*‘No they don’t [get extra support because there is a supervision order]. I think if they had all the support and monitoring that you get with an adoption, that might prove more successful, but we haven’t got the capacity or resources to support them, and after the year is up they are on their own.’* LA D SWM2

A common approach across our authorities was to arrange special guardianship support groups, which could include talks and advice (as noted in Chapter 11). The general view was that these worked well for those who attended, but they are not compulsory and so help and guidance may not reach those who need it, as and when they do; and it is not a substitute for casework with the child and carers. As one of the interviewees quoted above said:

*‘It becomes a different thing from when you have a worker actively going and asking how things are going, to, ‘you can always contact us if there is a problem, this is the help desk number, call us and then we can get involved.’ And I slightly worry about that, to be completely honest.’* LA E SWM1

The case of Damisi, below, illustrates the risks of ‘missing’ an issue, but also the impact that good casework can have when it does occur (Toby is a similar example, discussed earlier). In Damisi’s case there had been ongoing work with the special guardian, but it had focused on her housing and financial situation. Damisi was seen to be doing well, but deeper assessment of her understanding of her situation and the relationship with the other side of the family, had not taken place.

#### Damisi 2271

Damisi was a girl of dual race heritage, aged just over 1 at the final hearing. Care proceedings had started as soon as she was born, because of concerns about the risks from her mother's drug and alcohol misuse and neglect of an older child, now living with the maternal grandmother. When Damisi was born there were also care proceedings underway on her father's older children with a different partner. Damisi went to foster care and then to a paternal aunt. The proceedings ended with an SGO to her. Five years later Damisi was doing very well, flourishing in her aunt's care and much loved.

However, post-T2 the older child, who had been with his grandmother, came into care and talked about wanting contact with his sister, whom he had never seen. This drew attention to the fact that contact with Damisi's mother and maternal family had never been arranged, although it had been part of the agreed support plan. Damisi was now aged 8, but did not understand about her background, and thought of her aunt as her mummy. The social worker was able to talk with the aunt about the issues, and together they worked with Damisi to help her understand about her past and her family. By the last file entry, Damisi and her aunt were being helped to prepare for indirect contact with Damisi's brother and mother, separately.

Not all 'social work' tasks need necessarily be undertaken by a qualified social worker – for example, life story work might be undertaken by a family support worker, or child and family practitioner – but a core social work role is to arrange, coordinate and review the activities of other workers, in the department or external to it. The case studies show very powerfully how much local authority children's services departments rely on other agencies to provide services for the children and their carers, and how hard it can be to secure those services in a timely way, given the pressures that those agencies too are under; they also show how much is dependent on the willingness of the children and their carers to engage with the services that are offered.

There was evidence of delay sometimes in providing services, but this was not always the 'fault' of children's services. Some of the most frequently identified problems were to do with securing services from Child and Adolescent Mental Services (CAMHS), discussed further below. The children and their carers might need a wide range of services from other agencies. These include speech and language therapy, occupational therapy, physiotherapy, play therapy, counselling, children's centres and nurseries, one-to-one support for the children in mainstream schools, special education provision, help with transport to and from school, respite care, specialist therapeutic care, specialist medical and disability services, housing, financial help, support with welfare benefits, immigration and passport services.

Particular challenges arose when children were living out of the local authority area. There might be disagreements about whether and when the new area will take over work on the case, and what aspects (e.g. they might agree to do welfare visits but not to take over financial responsibility). There are rules about this in relation to SGO arrangements, namely that the applicant authority is responsible for the first three years of the order. But it may

be hard to exercise that responsibility effectively in a distant area, simply because of the travelling involved, but also because professional networks and lines of communication are unlikely to work as well. Furthermore, the many other services that the children and their families are likely to need – not just those of the local authority children's services departments – may be disrupted and/or harder to access in a different area. There were several examples of this creating problems for access to CAMHS. There were cases where the local authority commissioned counselling services from a local private provider in order to get round this problem.

Effective support and monitoring for the children in parental care is especially important, given the breakdown rates discussed in Chapter 11. Even for the cases that continued, there were usually ongoing concerns, as indicated by the wellbeing ratings discussed in Chapter 11. Examples are 1182, where there were two incidents of possible physical abuse or neglectful care leading to serious injury, and continuing reports of domestic violence; and 5371, the case where care orders and placement orders had been set aside, which had reports of domestic violence, poor school attendance and the mother struggling to cope.

Only one interviewee referred to the NSPCC reunification practice framework (the 2012 version was 'Taking Care', see Hyde-Dryden et al 2015; there is an updated 2015 version, Wilkins and Farmer 2015), but this focuses on the stages of assessment, preparation and initial return, not longer-term support. It emphasises the importance of not withdrawing support too quickly. The cases in the purposive sample showed that our local authorities did not close reunification cases too hastily – they were kept open, and in some cases considerable efforts were made to support the family (e.g. Aaron's case, discussed in Chapter 11). The difficulties were more likely to come from the parent(s) withdrawing from services, as long-standing difficulties re-emerged over time. Casey's case, 5721 mentioned in Chapter 11, is an example. The court case ended with supervision orders because the parents appeared to have turned their lives around during the care proceedings, but also because the children themselves (aged 11, 13 and 15) did not want to come into care. Very quickly there were fresh concerns about the children's welfare, and the parents were not keeping appointments nor accepting offers of services; these concerns continued over the first year. Shortly after T1 the family became homeless and the parents were described as 'completely disengaged'. The local authority issued new care proceedings, but the court held that the threshold for removing the children was not met. Supervision orders were made again. Soon after that, the same pattern of homelessness and disengagement began once more.

Two other cases in the purposive sample share this pattern, of having ended with a supervision order after a dramatic change in the parents' engagement with services, but later this dropping away and new care proceedings being taken, and these ending in another supervision order (3231, 1771) (as distinct from cases where the supervision order was extended at the end of the first year).

Some interviewees expressed frustration about court decisions which seemed to be over-optimistic about the chances of parental change being sustained after the proceedings – for example, a social work manager in LA D:

*'... the judge refused to allow us to remove him ... because the mum had stopped drug using a couple of weeks before we went to court, so he said that we left it too late ... and the judge was very sympathetic to the mum, and then she didn't drug use again throughout the whole care proceedings. The judge gave her the benefit of the doubt and it concluded with the son remaining in her care ... It is on a supervision order now, and I think it has been 6 to 8 weeks since the court case finished and we are already getting concerns again now, it always happens. It is the pattern we are trying to say, when she's really scrutinised she will do well, but the moment it starts backing off it all slips, and we have seen this throughout ...'* LA D SWM2

But there were other interviewees who thought that care proceedings could serve as a catalyst for sustained change, and that returns home should be seen as a successful outcome, the right thing -

*'Obviously there are some that didn't work out and we know, so maybe we were optimistic, but overall I think that is the right approach ... [But also] sometimes we want to go for a care order, but the guardians or the court themselves are kind of dictating the child needs to go home, so obviously you end up with a supervision order, which you then need to manage. But I don't necessarily see it as negative, because I think the point of working with parents is to give them hope, and if it's working out then it is a good thing.'* LA A SWM2

Another social work manager (quoted in section 9.4, above) stressed the importance of having the monitoring and supportive services in place for supervision order cases and said that her authority was much better at this now than it had been in the past. Even so, she concluded

*'But I do still think, when we do get some supervision orders, the families do go "two fingers up to you."'* LA B SWM1

### *Mental health services for children*

Some of the greatest frustrations in the interviews were to do with difficulties and delays in getting services from Child and Adolescent Mental Services (CAMHS). As noted in Chapter 2, there has been widespread criticism of CAMHS, notably for high thresholds and long waiting times, and the experiences in our six authorities were consistent with the themes in the House of Commons Health Committee report of 2014 (Health Committee 2014) and the report of the subsequent taskforce (DH and NHS England, 2015). The following comment from one of our interviews is just one of several, in different areas, that talked about the difficulty of getting a referral accepted by CAMHS:

*'... CAMHS will come back and say, "this child needs to be in a stable placement", or "this child is too unstable", or "they don't meet our criteria"... To say, actually we have a child that needs stabilising, but he can't be stabilised until he has settled – you know, it is like banging*

*your head against a brick wall. And in the meantime you have got this child who is crying out for help and you are frustrated, because you know he needs the help, you know the service is there, that they are not wanting to provide it, or say they can't provide it. So it is very frustrating.'* LA A SWM4

All of our local authorities had tried to alleviate the problem by making their own arrangements for specialist mental health provision for looked after children, although this does not do away with the need for CAMHS for the more complex cases. There were different organisational arrangements for this extra provision, ranging from specialist teams, a child psychologist based in a post-placement support team, and an agreement for a priority route to CAMHS. These schemes might take other types of case too, not just looked after children – for example, children in kinship care or on the 'edge of care'.

One approach to maximising the impact of specialist services was for them to offer training and advice to social workers, for them to deliver in turn to the children and/or the carers, to help them with the children. This was appreciated, as the manager quoted above said:

*'... we have our own on-site psychologist and we use her a lot just for consultation, you know ... [and] she will do direct work if she feels that it is appropriate, and she will meet with carers and have a discussion with them, to get their point of view and have a discussion to see if there are any strategies she can offer.'* LA A SWM4

Looking at the cases in the purposive sample, Caleb's case (described in Chapter 11) is an example of a poor response from CAMHS, but there were other cases where input was provided quickly and effectively – Hassan's case is an example (also in Chapter 11).

There were no examples of carers accessing the Adoption Support Fund, but this was only made available to SGO carers from April 2016.

### *Education and schools*

There have been long-standing, much publicised and often repeated criticisms of the care system for the 'poor educational outcomes' of its children. As discussed in Chapter 2, more recent and careful research has given a rather different picture, taking account of the special educational needs of the children and the length of time they have been in care (Sebba et al 2015), showing that longer periods of time in care are likely to lead to more positive outcomes.

Given the nature of our purposive sample, with the five-year follow up, we did not have children who had entered care early – that is, before the age of 11 – and who had gone on to take their GCSEs before T2. However, we were able to get some insights because the researchers were able to read the files beyond T2.

We did have one case, Ryan, a white British boy who was aged 10 at the final hearing 1281, and 17 when we read the file post-T2. His was a something of a surprise success story. During the proceedings Ryan was placed with his brother in a temporary placement. Despite concerns about their relationship, after T1 they moved together to a planned long-term foster placement. This quickly broke down for Ryan, although his brother stayed. After that

he had eight further placements, of which five were planned to be permanent. Eventually he went to live with an aunt and uncle. At T1 Ryan was described as having special educational needs and 'underachieving' at school but receiving one-to-one help. When the file was read post-T2, it said that he had got good GCSE results, and was now enjoying a vocational course at college. So – as we have said before – things do change over time, and outcomes are sometimes quite different to what might have been predicted, in positive as well as negative ways. We also had a case of a girl 1091 who was 16 when the file was read at the post-T2 stage, who had been in the same placement since she came into care aged 8. She was described as being on course to get Bs and Cs in her GCSEs and go on to college.

There were many accounts of children making good progress at school, despite the difficulties they might have in learning, coping with school routines, and peer relationships. One young man, 1261 who entered care when he was 13, got 'very disappointing grades' in his GCSEs, but by the time he was 18 he was at college doing a vocational course.

The interviews captured a range of experiences and views about the quality of understanding and support from schools, with some expressing frustration and others much more positive views. An adoption team manager spoke of the difficulties that adopters had in getting schools to understand the needs of their children, and called for:

*'Schools that can understand developmental trauma and the impact on the child, and how that makes the child behave and react – and accepting the child for who they are, and not excluding them at the drop of a hat, so then the child feels rejected. It has a huge impact on these families.'* LA A SWM1

But from another perspective, in the same authority, an IRO spoke positively about good links with schools:

*'I can think of a couple of schools that I worked with quite recently to provide what I would regard as excellent support to our children in care ... it is about the increased use of our Family Support Service and use of the one to one support. There is a range of educational services, individually targeted to a particular young person's specific needs.'* LA A IRO1

Several interviewees, in different authorities, mentioned the work of the 'virtual school', talking positively about its role in getting educational provision for children, support for them at school or home tuition if that was needed:

*'I think our education provision has always been good, and we make sure that we don't have children who are not in school ... we have got a Virtual School who attend our PEPs [personal education plan meetings] and we can talk to them about any difficulties in school and they will chase up applications. And we have got the Home Tuition Project, so we have got that. Obviously, we have got Pupil Premium all paid out to support our young people. So yeah, we have got lots of support in terms of education and health.'* LA B SWM2

But particular problems were identified in terms of lack of influence over schools that were 'academies', and also when children were placed out of area.

*Leaving care services/transitions*



Concerns about the progress and wellbeing of care leavers have led to the growth of local authority duties towards them, through various amendments to the Children Act 1989 and the revision of statutory guidance (DfE 2015c). Even so, leaving care can be a testing time for the young people and their carers. Two cases in the purposive study revealed some of the difficulties. One was Robbie, 6082 mentioned earlier in this chapter, aged 14 at the final hearing, who stayed in his long-term placement while his sister was moved to another. Robbie had special educational needs and went to a special school. As he grew older, planning started for the transition to adult disability services. His foster carers said that they wanted him to stay with them, as an adult care placement, and he said he wanted to stay there. The plan was complicated by different payment regimes, and also by a period of uncertainty about contact with his mother, with some talk about him going back to live with her. Eventually Robbie went to live with the people who had been his long-term respite carers. We assessed his wellbeing as rising from satisfactory to good at T2.

A similar case that had a less positive outcome was Declan 5251 a white British boy aged 13 at the final hearing. He and his siblings were considered to have suffered global deprivation and neglect, and physical, emotional, and sexual abuse. The proceedings ended with care orders and plans for long term foster care. Declan was in a placement by himself, which had started six months before the final hearing, and he remained there throughout T1 and T2. During the five year period, concerns grew about his ability to live independently. The case was transferred to an adult learning disability team. It was hoped he could remain in his long-term placement, but it ended a year before T2 because of lack of funding. He moved back to live with his mother, with support from the Adult Learning Disabilities Team. A year after T2, it was recorded that support had ceased because he was not engaging with it. We assessed his wellbeing as falling from good to poor, a very disappointing outcome after such a long period in a stable placement.

The same difficulties of transferring support from children's to adult services could affect young people living with their parents. An example is 3261, Chloe, a white British girl who was 14 when she became the subject of a supervision order, so reached 18 during our follow-up period. She had been diagnosed with ADHD and autism and had physical health problems. Chloe was referred to adult learning disability services but was assessed as not meeting their criteria; she was then referred to adult mental health services, but their assessment was that she did not meet their criteria, and that it was a learning disabilities matter. She was referred back to the learning disabilities team, which once again said she did not meet their criteria. The last note on the file was that Chloe's mother had been advised to ask for help via her GP. Set against that example, there was one case where the young person was living with his mother and it was reported that the transition to adult care services went well (2111) – a case which, according to the file, had been reviewed by Ofsted inspectors who had been impressed by the work achieved on it.

None of the children in the purposive sample in kinship care were old enough to have entered the stage of active planning for independence (the oldest was Samuel, who was 15 when we last read the file, post-T2). Children who were looked after by a local authority immediately before the making of an SGO may qualify for 'advice and assistance' from the

authority up to the age of 21 (Children Act 1989, s. 24), but we cannot say from this sample how that might work out in practice. (Also, 17% of the children on SGOs in our Study had not been in care before the order was made, see Table 8.2, so that support is not currently even a possibility for them.)

The cases show the difficulties around transitions to adult care services, disputes about what is the appropriate service, who is responsible and who should pay – but also, that these matters can be resolved successfully. The disputes are especially sharp in a context of restricted funding for local authorities. Funding also played a part in the ending of the foster placement for the young man who had done well after disappointing grades in his GCSEs (1261). He had been in that placement since before the final hearing, over six years, but when he reached 18 he had to leave his foster home because the carers considered that they could not afford to keep him under the ‘Staying Put’ rates. He was in a semi-independent unit and reported to be doing well, and still in touch with them.

#### **Messages for practice: services**

- Children who have been through care proceedings are likely to have suffered significant harm from abuse, neglect, and other forms of adversity. One can anticipate high levels of need. They may also have genetic conditions and complex health needs. For younger children, these may become more apparent over time.
- Whoever has care of the children are likely to need ongoing support (whether parents, kinship carers, foster carers or adopters), in a variety of forms. They may need parenting advice and emotional support, but also practical help (e.g. with housing, finances, day and respite care).
- Support always has to be assessed and planned on an individual basis, recognising the legal context and the specific needs, strengths and wishes of the children, their carers and families.
- Local authorities should be cautious about closing cases too soon, although there may be little they can do if families or young people refuse services and there is no court order; but the case file study shows powerfully how needs can develop or re-emerge at any time. There could be a system for regular ‘no obligation’ checking-in contact, and clear routes for carers and young people to re-refer themselves.
- Services and support are often provided by other agencies, notably health, education, and independent foster care agencies. They too are likely to be under pressures of high demand and limited resources. Local authorities need to ensure good links with these providers, at policy and practice levels; and ensure they have effective processes for commissioning and review of services. In some situations they may need to develop their own parallel or alternative service (as with the CAMHS examples described above).
- Services are under great strain, but there are examples of positive help and good outcomes, sometimes against the odds. Local authorities need to learn from and promote these stories, as they argue for better resourcing.

## 12.4 Conclusion

The data from the case studies and interviews presented in this chapter have contributed to answers to **RQs 2, 4, 5 and 8**, adding to the conclusions in Chapters 10 and 11.

In terms of **RQ 2**, about the characteristics of children and proceedings where care plans are (or are not) fulfilled 12 months after the final order, the chapter has expanded the picture given in Chapters 10 and 11. Some of the reasons why care plans may not be implemented, or not sustained, have become more apparent. Adoption plans were the least likely to be implemented, which could be to do with the emerging needs and age of the child but might also be to do with wanting to keep siblings together. Plans for young people to live in foster care might be challenged and disrupted by their own wishes and actions (e.g. Kalu, Veronica). Plans for children to return to or remain with their parents might end because of the re-emergence of problems which led to the proceedings in the first place, notably the disengagement from services. All parties – local authority children’s services, Cafcass guardians and the courts – need to be mindful of these risks. Of course, that is not a reason never to return children home; rather, it is a call for thorough assessments, careful planning and effective support as long as needed, and available at times of stress. The same applies to kinship care placements, which the case studies show could be under considerable strain from family dynamics and the behaviour of the young person, as well as practical matters such as finances and carers’ health.

**RQ 4** asks *what information from children’s case files is required for outcomes recorded in administrative data to be meaningfully interpreted?* Information from case files can certainly assist in giving a deeper understanding of large scale statistical data, notably giving a clearer picture of the reasons behind changes of care plan or placement, the range of services the children and families need and the challenges of supplying them (for example, if the family is living out of area). The temptation to capture this sort of information in the datasets by adding more and more questions has to be resisted for many reasons, not least the costs in terms of time and money, and the practical usefulness. As an example, since 2015, the SSDA903 return, which is used to collect data for the CLA database has asked for reasons for changes of placement, but the categories given are rather general (one is ‘change to/implementation of care plan’, which combines two different concepts and does not identify a reason) and only one can be selected (DfE 2015d). The file study shows that placements that end are likely to do so for a complex range of reasons and identifying one factor alone is unlikely to capture the dynamics of the situation. The material is best presented in the form of case studies, used alongside the statistical data, to assist in learning for agencies and individual practitioners. This underlines the added value of mixed methods research, with qualitative work alongside quantitative analysis.

**RQ 5** addresses *the explanations given by local authority social workers, managers and lawyers for the making, non-implementation and breakdown of care plans which are not successfully fulfilled*. There was some discontent from local authority interviewees about courts making unrealistic decisions, but on the whole, they tended not to blame the courts

for decisions which later turned out not to go well. Rather, they focused on difficulties of securing effective support for the children and their carers. They spoke of difficulties in finding sufficient and suitable foster and adoptive placements, although the evidence of the Study (the whole sample and the purposive sample) is that there were many stable placements and highly committed carers. Difficulties of family dynamics and considerations of sibling links (together or apart) were given as reasons for non-fulfilment of care plans, but the main challenges were seen as being to do with achieving regular visits for direct work from skilled workers, and securing services from other agencies, notably CAMHS, but also schools and services for the transition to adult social care.

**RQ 8** asks *to what extent can outcome measures in administrative datasets inform the practice of professionals in the family justice system?* The main point here is that the use of care proceedings is not included in the Department for Education's administrative datasets, the CLA and the CiN, and so of themselves, these datasets do not provide professionals or policy makers with information about children subject to care proceedings, except where care orders (or care and placement orders) have been made. Given the changes in the orders granted, and the substantial proportion of children subject to care proceedings without entering care it is essential that these outputs are recognised, as well as the wider issues about outcomes discussed in this report. This issue is considered further in section 14.8 and 14.9.

Of course, it would not be feasible to track all cases post-proceedings whatever order is made; balances have to be struck between data comprehensiveness and the pragmatics and costs of data collection, as noted above, and also, family privacy. The administrative datasets themselves do not give a particularly nuanced picture of the progress and outcomes of cases that do remain in, or in contact with, the looked after and child protection/child in need systems, and cannot say anything about those that have come out of it. The data can provide a useful context for the deeper learning that comes from case studies and frontline experience. Both sources of insight are necessary.

## **Summary**

This chapter has shown some of the challenges of caring and providing help for children who have been through care proceedings, regardless of the order and placement. However, the legal, policy and organisational frameworks differ for children in parental care, kinship care or public care, and these give carers and local authorities very different powers and responsibilities. The chapter has highlighted the challenges of sometimes fraught family relationships, uneasy sibling bonds and restricted or delayed service provision. But it should be emphasised that there were also examples of warm and beneficial family relationships, positive sibling relationships and responsive and timely services. The chapter has identified a series of messages for practice in each of these three areas. The lessons from the case file study and the interviews enhance the picture given by the administrative data. One of the

key underlying messages is about the importance of realism in the assessments and planning of local authorities and in the decisions of the courts, regarding the needs of the children and the adults caring for them. A second key message is about the importance of social work practice to support the children and their families, both in securing and coordinating services from other agencies, and in direct face-to-face work.

## Part 5: DISCUSSION AND RECOMMENDATIONS FOR PRACTICE

### Chapter 13 Context at the end of the Study

#### 13.1 Introduction

Recommendations from research must relate to the world as it is when they are published, not simply as it was when the study was conceived and executed. This chapter reviews the changes in the social work and legal context in which care proceedings are brought and children are cared for as foundation for a broader discussion of the findings overall and identification of recommendations for practice.

Key aspects of the context were discussed in Chapters 2 and 4. Prime amongst them are austerity politics and the lack of resources for public services, particularly children's social care. These are continuing and have worsened, making it even more difficult for parents, carers and the children they look after to thrive. For example, the benefit cap, the limit on the total amount of benefits families can receive which bites particularly on single parents, was lowered from November 2016. Also, parents claiming Universal Credit, Income Support or Child Tax Credit can no longer receive benefit for a third or subsequent child born after 6<sup>th</sup> April 2017. Of course, none of the children in the Study were born after that date, but almost 1 in 6 applications involved three or more children, and a third of children in proceedings had 2 or more siblings subject to the proceedings. Mothers were young, half were aged 27 or younger and might be expected to have more children. Families impacted by these benefit changes have already experienced real terms reductions of benefits through inflation, reduced up-rating for Child Benefit, limits on housing benefit and the lack of affordable housing etc. Poverty has increased amongst working households and a third of children are growing up in poor families (Alston 2018, 2019).

Poverty negatively impacts on parenting, adding to the stress parents experience. Whilst neglect is not a direct consequence of poverty, lack of adequate money reduces parenting capacity in many ways. In addition, austerity policies have 'gutted local authorities' eliminating many services (Alston 2019, 5); the closure of services for families, particularly children's centres, leaves struggling families with less support. Not only does this impoverish children's lives, a minority are harmed. The number of children subject to assessments, child protection plans and care proceedings has continued to increase (see Figure 2.5), adding to the pressure on local authorities and the courts, as well as families. The balance between child protection work and family support, discussed in Chapter 4, is under renewed threat as local authorities, faced with growing demands for statutory social work, particularly relating to child protection, care proceedings and care, have continued to close support services. Ofsted's National Director of Social Care has noted both a 60% decline in local authority spending on preventative services, driven by cuts in their funding and the demands of statutory services, and substantial increases in over 16 year olds entering care. The House of Commons Public Accounts Committee has concluded that the children's social care sector 'is not financially sustainable' (HC PAC 2019, 3) because local authority income is insufficient

and services are being sustained by drawing on reserves (HC HGLGC; ADCS 2018). Resource and demand issues preclude effective social work. The solution has been seen to lie in reducing the numbers of children in care, but this is only appropriate if it can be done safely, so the implications extend beyond local authorities to changing the wider context of support and services for families (Stanley 2019).

There are some signs that the number of care proceedings is now reducing - since November 2018 the applications have been consistently lower than the figures for the same month in the previous year - but over 40% of local authorities increased their rate of care proceedings per 10,000 population in 2017-18 (Cafcass 2019) and the overall number of looked after children continues to rise (DfE annual). There is no indication that the public spending changes announced in 2019 will improve children's services, particularly in the face of demands for adult social care, the NHS etc.

Government continues to be both distracted and paralysed by Brexit, a lack of leadership and the lack of an effective Opposition. Despite warm words from the former Prime Minister, Theresa May, little or nothing has been done since 2010 to support struggling families and the children who are casualties of family dysfunction or breakdown.

### **13.2 Care, courts and care proceedings**

#### *s.20 accommodation (s.76 in Wales)*

The tensions between local authorities and the courts about the control of social work practice were highlighted in Chapter 4, and they have continued. As noted there, they are longstanding and to some extent inevitable, given the different roles that they have; but the extent of them was described as 'dysfunctional' by the Family Justice Review (2011). Debates about the use and misuse of s.20 accommodation exemplify the ongoing tensions.

Local authorities have duties and powers to accommodate children who need to be looked after where they have no carer or the person who has been caring is unable to provide suitable accommodation (s.20). Provision of accommodation is part of their family support responsibilities, used for temporary and long-term care, for children of all ages, at the request of parents or children aged over 16 years, or on the instigation of the local authority. Particularly, accommodation powers are used to care for children at times of crisis, including as a precursor or alternative to seeking court orders where parents do not object. Packman and Hall, in their study of s.20 in the 1990s found that the power was sometimes coercive initially but nevertheless partnerships developed between parents and social workers for the benefit of children (Packman and Hall 1998). Where emergency intervention was required social workers prioritised s.20 over applications for EPOs and routinely pressed parents to agree (Masson et al 2007).

Courts are 'gate-keepers' for care proceedings and emergency child protection using court orders; other aspects of children's social care are matters for local authorities and subject only to limited court oversight in claims for Judicial Review (JR) or under the Human Rights Act. Accessing these remedies is more difficult – legal aid is subject to means and merits tests and court applications for JR require leave. A favourable order in JR can require

reconsideration of the decision, damages may be awarded where rights are breached but, in practice, the courts only operate as a backstop, allowing challenge to practices which are completely unreasonable or illegal. Consequently, courts have exerted relatively little influence over local authorities' use of s.20 accommodation but there has been criticism of oppressive practice (*Coventry City Council v C*, 2012) with damages under the HRA (*Re H*, 2014; *Northampton CC v AS*) and successful challenges where homeless children have been refused accommodation (*R (ota G) v London Borough of Southwark*, 2009), and the courts have held that where the local authority arranges care by a relative it is using s.20 so the relative is entitled to a fostering allowance (*R (SA) v Kent County Council*, 2011).

Munby P, giving judgment in an Appeal in care proceedings, *Re N* (2015), strongly criticised the way s.20 was used and set out conditions and restrictions on this, even though s.20 was not a live issue in the case. Specifically, his judgment stated that s.20 was only a 'short-term measure' and required the parent's *informed* consent. He warned local authorities:

'The misuse and abuse of section 20 ... is not just a matter of bad practice. It is wrong; it is a denial of the fundamental rights of both the parent and the child; it will no longer be tolerated; and it must stop. Judges will and must be alert to the problem and pro-active in putting an end to it. From now on, local authorities which use section 20 as a prelude to care proceedings for lengthy periods or which fail to follow the good practice I have identified, can expect to be subjected to probing questioning by the court. If the answers are not satisfactory, the local authority can expect stringent criticism and possible exposure to successful claims for damages.'

(para 171)

Munby P's statements were later held not to be law (*LB Hackney v Williams* 2017 CA) only 'good practice guidance' (para 77) but their repercussions were significant. Negative views of s.20 gained wide publicity (Tickle 2015; Gilliat and Sligo 2015), and local authorities began to receive more claims for breach of human rights. ADCS and Cafcass issued a joint statement accepting the concerns about undue drift but defending the value and appropriate place of s.20. They expressed concern that caution about using s.20 could translate into inappropriate reluctance to use it, in conflict with the 'no order' principle (s.1(5)) and encouraged local authorities to review their use of s.20 (ADCS and Cafcass, 2016). As a result, some care cases where s.20 had been relied on and local authorities considered it no longer defensible were brought to court, but *Re N* also resulted in proceedings on cases which could have been properly managed by agreement and without a care order restricting parental responsibility.

The controversies around s.20 led the Family Rights Group to establish a 'knowledge inquiry' into the topic in summer 2016, reporting in 2017 (Lynch 2017). The overall tone is critical of social work practice, suspicious that s.20 is often used coercively (or not used when it could be, e.g. to support kinship care); but it also notes the competing imperatives that point away from the greater use of the court as a remedy for the problems – for example, the 'no order' principle and the harmful impact that care proceedings could have on long-established arrangements, or on delicate situations where partnership working is in the

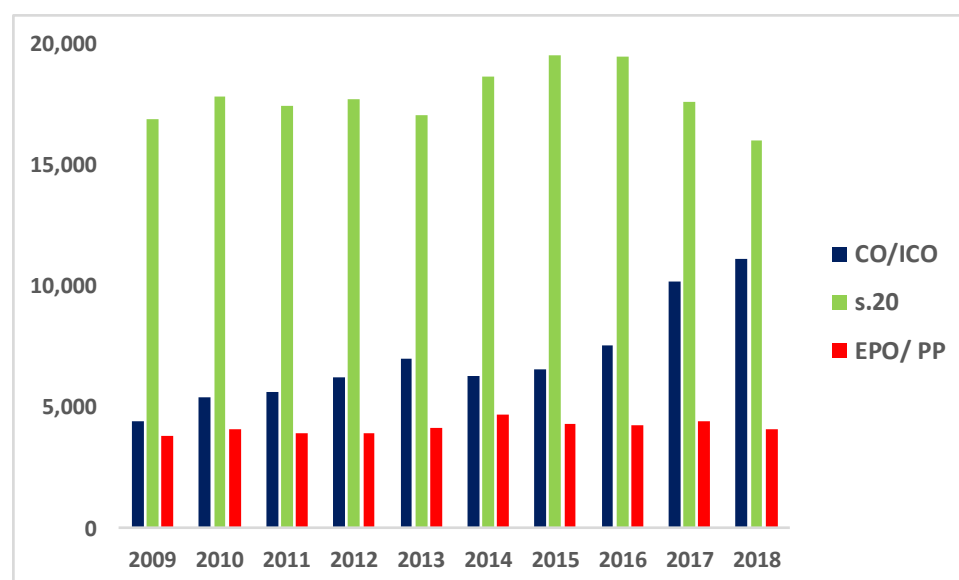


balance. Recommendations include the provision of specialist, free, independent legal advice to parents (and young people) when a s.20 arrangement is being proposed, independent advocacy support for parents with learning disabilities, specific national guidance for social workers, and more generally revised guidance on partnership working with families (i.e. a move back towards prescription; and it also wanted more funding for the Family Rights Group's national advice service) (Lynch, 2017: 62-68). But it also calls for better funding for child welfare services, to redress the closure of family support services and to bring down the thresholds for specialist services.

There has been no response to this from Government but the use of s.20 was discussed in the Care Crisis Review (2018), also led by the FRG and by the President's Public Law Working Group on care proceedings reform (Public Law Working Group 2019), which also proposed more guidance, see below.

Although there are no published figures, it appears from the Law Reports that human rights claims based on 'misuse' of s.20 have become less common. Key decisions about the processes which must be used (*CZ v Kirklees Council*, 2017); clarification of local authority s.20 powers by the Supreme Court (*Williams v LB Hackney*, 2018 SC), which required clearer action by parents who objected; and the low level of damages have combined to discourage these claims and make negotiated settlements more attractive (*SW & TW (Human Rights Claim: Procedure) (No1)*, 2017).

**Figure 13.1: Numbers of children becoming looked after by s.20, care orders and emergency provisions 2009-2018 (England)\***



\*Source: DfE (annual), figures for the year ending 31<sup>st</sup> March of each year.

The impact on the use of s.20 and court orders is clear in the DfE statistics: there has been a re-balancing of the legal basis for entry to care in favour of court orders. The number and proportion of children becoming looked after by s.20 declined whilst the use of care orders has increased, see Figure 13.1, above.

In 2018, 35% of children who became looked after did so by care orders, compared with only 20% when S2 data were collected; conversely, only 50% of children entered by s.20 in 2018 compared with 62% in the year ending March 2015, a figure which had been fairly stable for the previous 10 years, at least (DfE annual). The proportion of children in care under court orders in Wales is even higher; only 11.4% of looked after children were subject to s.76 on January 1<sup>st</sup> 2018, compared with 67% who were subject to full care orders and 11% were subject to ICOs but these figures include children under care orders placed with parents (Care Inspectorate Wales 2019).

### *Care Crisis Review*

In September 2016, Munby P drew attention to a ‘crisis’ in the courts and in legal aid (Munby *View 15*, 2016). The number of care cases was rising continually, putting pressure on courts and professionals, already working at full capacity to meet the 26 week timetable; there was no prospect of additional resources and the legal aid bill was rising. In response, the Care Crisis Review, 2017-18, funded by the Nuffield Foundation and facilitated by the Family Rights Group was established:

‘To identify specific changes to local authority and court systems and national and local policies and practices that will help safely stem the increase in the number of care cases coming before the family courts and the number of children in the care system.

To do so in a way that retains focus on achieving the best outcomes for children and families and takes account of the current national economic, financial, legal and policy context that impacts on families and on local authority and court practice.’  
(Terms of reference)

The Review called for, amongst other things, a renewed emphasis on ‘partnership and co-production with families’; a multi-agency focus on children and families on the edge of and in the care system, working together to prevent children coming into or staying in care unnecessarily; greater use of family group conferences, family and friends care and advice and advocacy for families; strengthening pre-proceedings practice and decision-making about the use of care proceedings and providing further guidance on this; post-proceedings support for families caring for children and for parents whose children have been removed; and extra funding for local authorities to make up the shortfall caused by the decade of austerity (FRG, 2018).

In a similar vein, the Chief Social Worker, Isabelle Trowler, called for ‘clear blue water’ between the cases brought into care proceedings and others where the children might be considered to be at risk of significant harm but proceedings can still be avoided. There should be ‘stronger family focused practice, better decision making and more sophisticated and tailored support services’, a re-valuing of s.20 accommodation, greater use of shared care and a re-assertion of the no order principle; but she also warned that child protection practice should not be undermined, and if a child cannot be kept safely in their family network, court action should follow without delay (Trowler, 2018: 1).

Although the Review was clear that the increase in care proceedings was not due to lowering the 'threshold' for intervention, the new President of the Family Division, Sir Andrew McFarlane, discussing it, appeared to suggest that care proceedings should no longer be used for cases of neglect and more use should be made once more of s.20:

'[It seems to me obvious that if there has been a sudden and very significant rise in the number of cases coming to court, these 'new cases' must, almost by definition, be drawn from the cohort of cases, which in earlier times would simply have been held by the social services with families being supported in the community without a court order....No one suggests that there has been a sudden rise of 25% in the number of children who are being abused in the most serious manner. Further round the spectrum of abuse lie [serious] cases which...do not justify...immediate removal from the home. .... The need for social services to protect children will have been properly met by non-court intervention... up to looking after the child with the agreement of the parents under ... s.20.' (McFarlane 2019)

No increase in serious *abuse* cases does not mean that care proceedings are unnecessary; serious neglect is recognised as very damaging to children (and indeed there was a major drive at the time of the Family Justice Review to increase awareness of these harms and the importance of timely action to protect children from them: Brown and Ward 2012) and the majority of care cases involve neglect. The courts have been satisfied that the threshold is met, with very low proportions of cases being dismissed or ending without an order (Masson et al 2008, and above Figure 9.1). Whether or not child neglect requires care proceedings relates to alternative ways of improving children's care, its causes and extent, matters which are routinely considered by local authorities before bringing care proceedings and courts hearing them. Although neglect (or abuse) may not mean care proceedings are required, the circumstances where they are depends on the interaction of many factors; dividing cases which require proceedings from those that do not is complex, requiring both assessment and judgment.

More use of s.20 would involve unwinding the impact of *Re N* (2015) but also necessitates (re)-building trust in children's services by courts and families, and also confidence in social workers and local authorities who face (public) criticism when children are harmed, when they fail to use proceedings where Ofsted thinks should have done so and from the courts for applying too late. The Care Crisis Review (2018) recommended further Statutory Guidance on the use of s.20 (para 3.40) and even monitoring arrangements by National or local Family Justice Boards (paras 3.41) an approach which reflects the current lack of trust in local authorities.

### *Special Guardianship*

Concerns about rushed assessments and children being placed with special guardians only after the SGO was made, raised in the Study (see above Figure 7.6 and accompanying text)

and by Harwin and colleagues (2019a) reached the Court of Appeal in *Re P-S* (2018). The children's guardian's appeal against care orders, rather than the expected SGOs, for children not yet living with their intended carers was allowed, and SGOs substituted. Munby P discussed the issues raised by the need to complete cases in 26 weeks and suggested the Family Justice Council be asked to provide guidance. Interim guidance, issued in May 2019, emphasised the importance of early identification of carers and allowing at least 12 weeks for their full assessment (FJC 2019), and was repeated by the Public Law Working Group, which also recommended: a reduction in the use of SOs with SGOs (see above, Figure 9.4); 'renewed emphasis' on parental contact, sensitive to the particular challenges that this can cause in SGO cases; legal aid for potential special guardians; consideration of amendments to create interim SGOs and other changes (PLWG 2019: 116 ff).

The *Re P-S* judgment also called for further research on the processes and outcomes of SGOs. The Nuffield Family Justice Observatory subsequently commissioned CoramBAAF to undertake a 'rapid evidence review' to assist the Family Justice Council in revising the guidance on SGOs. This research summary was published in August 2019 (Harwin et al 2019b). The principal recommendations include earlier identification of prospective special guardians, a statutory minimum level of preparation and training, requirements for the prospective special guardians to have experience of providing day-to-day care to the child, and for entitlements to support that align with those for adoption and/or foster care. It also calls for resolution of the issues of party status for prospective special guardians in care proceedings, and for a suitable legal order to allow sufficient time for the child to live with the prospective special guardians before a final order is made, such as an interim SGO.

The importance of identifying potential kin carers was well recognised in the local authorities in our study but not always easy to achieve, and even where relatives were assessed it was not uncommon for them to withdraw, leading to further searches and assessments later in the proceedings. Whilst setting a minimum timescale for assessments and indicating that timetables can be extended should go some way prevent an over focus on the court's timetable at the expense of the carers' and the local authority's, it is all too easy for late identification to be seen as a failing, a breach of good practice, rather than an inherent difficulty in complex and divided families where court proceedings are required to secure children's protection.

#### *Further reforms to care proceedings?*

McFarlane P established a Public Law Working Group to find ways to: make the current system more effective quickly, consider radical restructuring, reduce variations across the country and develop good practice guidance. He was concerned about the pressure on the courts and those working in them, particularly judges and the need to streamline processes (McFarlane 2018). Its Interim report, published in June 2019, drew on unpublished work by the DfE and MoJ and the Care Crisis Review (FRG 2018). It made 57 core recommendations ranging from details of the application form to the broader issues of diverting cases through the pre-proceedings process, increased use of s.20 and relaxing the 26 week time limit, particularly where care by a relative was planned (PLWG 2019). No mention was made of

the need for more resources, reflecting the message the Judiciary have had about this, but the consequence is that changes are forced on other parts of the system that may or may not be the main cause of the problem. In many respects this was a hastier re-run of the Family Justice Review and the Care Crisis Review, in response to difficulties that had arisen but with a marked absence of research evidence, rather relying on the experience of working group members. It also went further in examining social work practice, with change in social work practice being seen as providing answers to some problems in the courts.

In the context of the courts' enduring mistrust of local authorities and wish to control social work practice (see Chapter 4), it is notable that the Working Group's approach to improving children's social work practice is by imposing detailed good practice guidance and more procedures, with greater involvement from local authority lawyers. This stands in notable contrast to the Munro Review recommendations of removing prescription and encouraging reflection (Munro 2011); but, as noted in Chapter 4, the tensions between these two approaches are nothing new. The Working Group did also stress the importance of relationship-based social work, but the combination of these two approaches inevitably produces some rather conflicting proposals. For example, in response to the problems of late identification of potential carers, it encourages social workers to explore this persistently with families before proceedings, whilst recognising that there may be good reasons for parents not to wish to share information with their families (PLWG 2019, paras 94, 140), but it also calls for clearer guidance about disclosing concerns to relatives without parental consent (para 92). Of course, these are not incompatible, but the point at which one moves from the more supportive approach to the more coercive is a fundamental practice dilemma for social workers, not solved by practice guidance. Although the Interim Report emphasises that its 'good practice guidance' is only 'in draft' (para 20.i), it reads rather like a checklist for lawyers against which social work practice can be measured, and a reflection of the (low) level of trust between the courts and local authorities which the FJR was so keen to rebuild. It is also unclear what legal status such guidance could have where it relates to local authority practice unrelated to proceedings, unless it is issued by the Secretary of State for Education.

Overall, the period following the introduction of the PLO 2014 has arguably seen a rise in mistrust of local authorities in the courts, demonstrated very clearly in the judgments about s.20, McFarlane's doubts about the reasons for the rise in the number of care applications and the tone of the Public Law Working Group Interim report. But judicial attempts to impose practice guidelines have rebounded, changing the balance in entry in favour of the compulsory route, leaving the courts weighed down with a volume of cases and hearings beyond their capacity, and refocusing social work on work for the courts rather than direct work with children and families. More children enter care under ICOs during proceedings and (presumably) fewer by s.20 beforehand (see Figure 13.1). Consequently, more court time is required to hear ICO applications at the start of proceedings and, as noted by the Working Group, there is more demand for short notice hearings (PLWG 2019, para 156). Given these changes, the findings about use of s.20 before proceedings outlined in Chapter 8 are unlikely to reflect the position after 2017.

### 13.3 Improving data on the operation of the Family Justice System

Following a Scoping Study, the Nuffield Foundation decided to establish the Family Justice Observatory (NFJO) (Broadhurst et al 2018b) to support decision-making by (amongst other things) improving the use, analysis and dissemination of national data. A key activity for the NFJO is the creation of a data platform and analytics service to facilitate improved access to the Cafcass and Cafcass Cymru databases and link them to other datasets. Work is nearing completion on making anonymised Cafcass/ Cafcass Cymru databases available to researchers through the SAIL databank, which will make it possible, for example, to examine different groups of children subject to different family proceedings or different orders, similar to the work by Karen Broadhurst's team on infants subject to care proceedings (Broadhurst et al 2018) and the work on regional variation in the orders (Harwin et al 2018). The potential of these data to develop understanding of the impact of proceedings beyond the courts, and the influence of the use of family proceedings on other systems will depend on their linkage to other datasets, not only the CLA and the CiN, as trialled in this project, but also health data, with which the SAIL (Secure Anonymised Data Linkage) Databank has considerable experience. It will also depend on the development of analytical capacity and, more importantly, in developing the interest and understanding of family justice professionals so they value knowing about patterns of practice and not just examples from reported cases.

The Ministry of Justice has also worked to improve data on family justice by providing visualisations of the Family Court Statistics since 2017 (MoJ 2018b). These make it easier to explore the data but they do not add to the information from the published data files. However, it is now possible to see changes in the timeliness of care proceedings in different DFJ Areas and how this has changed over time, and also to see the changes in the numbers of children involved in public and private family law proceedings in different age groups. A separate visualisation prepared for Local Family Justice Boards also allows them to compare their performance in terms of the timeliness of care proceedings with LFJBs with similar demographics (FJB 2019).

A more substantial development is the Ministry of Justice and Department for Education Datashare and the visualisations resulting from that, PLATO (Public Law Applications to Orders) and WATch (Who are the children) tools. The Datashare created a matched dataset between family court data, Cafcass data and the Department for Education's National Pupil Database (NPD) for the years 2010 to 2017 (MoJ 2018c, d). The PLATO tool presents an overview of applications, orders and their combinations by region and DFJ Area, allowing comparisons nationally, regionally and by year. The WATch tool provides details – age, ethnicity and the type of special educational need and allows comparisons of applications and orders by these. Using these visualisation tools requires a good understanding of the family justice system, for example why there are more orders in public law cases for SGOs than there are applications. It also requires a careful reading of the definitions used: for example, 'weeks to a permanent arrangement' measures the average duration of cases from application to order, counting the last order made before a period of 2 years where there were no further applications. Welsh data is included in the tools but only where the

source is the court data system, FamilyMan; Cafcass is the source for the breakdown by local authority and the NPD for ethnicity and special educational needs.

Whilst the Datashare has the potential to build a demographic picture of the children involved in family proceedings and provide longitudinal data on the educational outcomes for children who are subject to proceedings, it has limitations because it does not include data from Cafcass Cymru, and omits approximately 10% of family proceedings records because they were incomplete (MoJ 2018d). Linking to the NPD but not the CiN database (which is within it and is already linked to the CLA), means that the Datashare excludes children who are under compulsory school age not taking up state funded pre-school provision and those in the private sector. The match rate achieved is said to be between 70% and 75% (para 1.3). Put another way the Datashare omits a quarter of children involved in proceedings and those omitted are mainly pre-school children and those privately educated.

There are plans to make these data available to researchers with access via a 'safepod' (MoJ 2018d) but Jay, who trialled the system, has criticised the lack of access to analytical tools within the system and the absence of sufficient explanations of how data matching was achieved (Jay et al 2019). It is currently unclear whether the Datashare will be extended to include later years.

### **13.4 Developing children's social care and knowledge on children's outcomes**

#### *Data and analysis*

The Department of Education has improved local authority access to data relating to children and young people by providing the LAIT (Local Authority Interactive Tool) (DfE 2017c) which brings together data on health, housing, ethnicity, education, child protection and Ofsted ratings, allowing local authorities to examine the conditions in their areas and compare them with their 'statistical neighbours' and region. In 2017, local authorities working with Ofsted have created a data tool (ChAT Children's Services Analytical Tool) (see ADCS 2017) which produces visualisations of the data required for Ofsted Inspections, (Annex A data) from excel spreadsheets. Local authorities can use this to prepare for inspections and to monitor their performance on these indicators.

The Department of Education has also developed a longitudinal analysis of CiN data by matching CiN records across a 6 year period (2012-2018). This shows the extent to which children are in need in one or more years in the period and their patterns of movement (journeys) between being in need, in need of protection, looked after and not in need over time (DfE 2019a). Out of more than 2.2 million children who were referred to children's social care over the 6 years, the most common journey was to be a child in need in only one year, this accounted for just over 20%. The remaining children had more contact but each journey pattern is less common: for example 10% were in need during two consecutive years in the period. The analysis also identified 74,000 children who were in need for at least one day in each of the 6 years; those on protection plans (21%) or looked after (24%) had the most common journeys (DfE 2019a, Figures 7a and 7b). Although the analysis

examined ethnicity and education of children in need it was not able to explain the processes which resulted in children moving from in need or in need of protection to being looked after (or vice versa), an issue which is considered in Chapter 14 in the light of our Study.

Sebba et al in their evaluation of the Department of Education's Innovation Programme (see below) noted that local authorities are 'highly variable' in their use and analysis of data and the resources they have for this, but some drew on partnerships with universities to support this work. Whilst they recognised the importance of sharing data with agency partners in principle, the complexity of different targets, priorities and systems meant that few projects succeeded in this and some struggled to provide baseline data against which changes could be evaluated (Sebba et al 2017, 62-3).

### *Children's Outcomes*

Chapter 4 of this report outlined the conceptual and practical complexities of assessing children's outcomes after care proceedings, and the data presented in Chapters 10, 11 and 12 illustrated the achievements and challenges. It is of course reasonable to ask what the outcomes are of these expensive and sometimes traumatic interventions in children's lives, and how they can be improved; but one has to be aware of the complexity of these questions and subtlety of useful answers. Sebba et al's (2015) work on educational outcomes for looked after children and children in need, described in Chapter 4, is an excellent example of the necessary thoughtful and nuanced approach.

There has been increased interest in considering children's outcomes during the study period with calls to improve the analysis of outcomes for those in care and care leavers (Alliance for Children in Care and Care Leavers 2016) and plans to explore other outcomes for these children (DfE 2019b). Whilst data is readily available on educational outcomes, other crucial aspects of children's lives raise complex questions of measurement and the interaction of factors, as well as more political questions about focus and choice (Dickens et al 2019).

The Welsh Government commissioned a study of children's outcomes 4 to 5 years after the making of a care order to explore children's placement journeys and how these compared with the aspirations in the care plan, and the factors associated with more positive placement outcomes. The study drew on data for the whole cohort of children with care orders made in 2012-13 (1,076), more detailed data from social care case files for 79 children from five local authorities and interviews with 120 social workers, managers and IROs (Burch et al 2018). Although it focused on placement stability and achieving permanence it also considered a broader range of outcomes, the home environment, communication and attachments; emotional health; education; physical health and sexual health and the absence of offending for children in the subsample. There are many parallels between the study and its findings and this report, but the focus of the Welsh Study was children whose proceedings ended in care orders. Also, the Welsh Study had a ready audience in the Improving Outcomes for Children Ministerial Advisory Group and the Welsh



Government's policies for looked after children (Irranca-Davies foreword to Burch et al 2018).

In 2017, the Office of the Children's Commissioner for England commissioned a rapid review of outcomes as part of their work on children and young people who were vulnerable and/or invisible in the literature. The aim was to establish what evidence of outcomes was available for different groups of vulnerable young people including, for example, children in local authority care, those detained, unaccompanied asylum-seeking children and children with special educational needs, and the differences between their outcomes and those of children who were not considered vulnerable. Outcomes were categorised into four main domains: educational, economic, social and behavioural (CCE 2017a). Whilst the evidence base on children's outcomes is limited it is increasing; for example, a systematic review of outcomes after foster care includes economic (employment and income) outcomes in early adulthood (Gypen et al 2017) as does a comparative study of care leavers in early adulthood in England, Finland and Germany (Cameron et al 2018). In addition to objective measures Professor Julie Selwyn has been working with Coram Voice on a study 'Our Lives, Our Care', discussed in Section 4.4, above, which measures subjective wellbeing using a survey focusing on how children in care feel about their lives (see Wood and Selwyn 2017).

In recognition of the importance of evidence for improving children's social care, the Nuffield Foundation funded work by the Rees Centre, University of Oxford to develop an 'outcomes framework' to complement the administrative data collected in the CiN and CLA databases (La Valle et al 2019). The initial stage in this work is conceptual with a focus on deciding which outcomes should be measured to assess whether services have the expected impacts for users, and the 'intermediate outcomes', i.e. the key requirements for the conditions necessary for achieving good user outcomes. For children, outcomes from children's social care included feeling safe; being healthy, happy and achieving developmental milestones; and making progress in education. The 'intermediate outcomes' included an environment which supports good social work practice; good assessments of children and families, and the provision of an appropriate level of support; and a service context which values and empowers families who use services. The views of workers and service users would be essential to measuring these outcomes. Although the framework focuses on the work of children's social care it recognises that this occurs within the social context within which families live (poverty, homelessness and other disadvantages), depends on 'corporate support', particularly an adequate budget, and the work of other agencies, who identify families who need help from children's social care and/or provide services for them. In relation to these services, children's social care's roles are advocacy and co-ordination.

The next stage of this work is to identify and test the feasibility of the proposed indicators and establish how useful they are in measuring service planning and delivery, a process which will involve reviewing the data already collected and what else is needed. Local authorities already collect a mass of information, not just that required for the CiN and the CLA but for their own processes. The report notes that this information is fragmented which 'can make it difficult to see the whole picture and how different aspects of the service relate

to each other' (La Valle et al 2019, 59). This is particularly the case in relation to legal processes (pre-proceedings and care proceedings), which are not part of the CiN collection. As regards user outcomes and 'intermediate outcomes' from cases in the courts, this also involves recognising the impact of compulsion (positive and negative) and the wider context of court and local authority relationships, as discussed in Chapter 4.

### *Service developments*

Government resources for children's social care have generally been reduced but in 2014 the Department of Education launched the *Innovation Programme* for children's social care, with the declared aim to improve outcomes for children, encourage innovation and 'drive better value for money'. Funding amounted to £200 million over six years (2014-20), on the face of it a significant sum, but it averages out at £33 million per year, a tiny amount compared to the total annual expenditure on local authority children's services in England, which was £9.4 billion in 2017-18 (DfE 2018e). Funds were available for local authorities and voluntary organisations to bid for grants to develop services, which were to be rigorously evaluated and add to the evidence base. (The DfE innovation programme website does have a great deal of information about the projects and their evaluations.)

Of course, there is always a need for public services to develop, improve and share learning, and central government initiatives to promote innovation are nothing new (Brown 2010). This programme has to be understood in that longer history, which is shaped particularly by central government antipathy towards local authorities, policies to promote the outsourcing of public services to private providers, and the wider context of severe cuts to local government budgets (see Jones 2019). Linking back to the discussion in Chapter 4 about the control of social work policy and practice, the innovation programme may be regarded as a prime example of another regulatory technique available to central government, to shape practice through funding. Favoured initiatives in favoured areas receive money at the same time that established services are being cut because of lack of funds, and less favoured areas miss out.

The projects funded in the first wave variously aimed to reduce the numbers of children entering care, reduce the use of residential placements and increase reunification, improve staff knowledge, attitudes and self-efficacy, and reduce staff turnover and caseloads. The evaluation of the first wave showed ambiguous results (Sebba et al 2017). The majority of the projects aiming to save money appeared to have done so, but only 14 out of the 23 projects that aimed to achieve reductions in the numbers of children entering care, numbers in care or days spent in care, did so. As the report also notes, the evaluations were conducted over a short period, and the longer-term outcomes for the children of these changes are not known. Only a small minority of the projects that aimed to increase worker satisfaction or reduce staff turnover, did so. Improvements were achieved in different ways but service redesign with multi-professional teams and co-location, the introduction of 'Signs of Safety' (SoS –Turnell and Edwards 1999, see Chapter 2) and development of Family Group Conferences featured strongly, although the short timescale of the projects and the evaluations meant it was too early to reach firm conclusions. The evaluation report

highlights the challenges of changing organisational cultures, which echoes themes we discussed in Chapter 4.

The samples were too small in some projects for robust evidence, but the evaluation concludes that overall the programme did encourage further innovation. It suggests this could have been because the successes and positive responses from Ofsted encouraged replication by other authorities, but it is hard to show causality and it is not clear whether it was also because there was 'no other game in town'. For the future, the evaluation recommends longer projects and common outcome measures (Sebba et al 2017). One of the policy recommendations was that further deregulation of children's social care should be supported, but as noted in Chapter 4 and highlighted in this chapter, there are other pressures from central government, the courts and third sector organisations such as the Family Rights Group for greater regulation and prescription, contributing to the 'confusing narrative' (Munro 2012: 53).

Assessing the projects was a complex task and it was not always clear that improved outcomes resulted from more skilled social work rather than other changes, nor that the evaluations were themselves robust. There are further concerns about this approach to service improvement: some authorities become skilled at obtaining grants and are able to innovate and save money, for example by reducing entry to care, releasing further resources for other services, whilst others are unsuccessful and remain locked in a cycle of high demand and inadequate resources. As a consequence, services become increasingly divided, and the consequences for services users geographically determined, raising questions about the limits of localism in terms of fairness and the role of central government in achieving this, rather than undermining it. Having said that, it is worth noting that good practice can be found in non-innovation areas too, and poorer practice in innovation areas; a much more nuanced picture is needed of the factors that influence practice, and how practice in turn influences outcomes. In addition, where funding is time limited, there is no guarantee that even successful innovations can be continued, so that gains achieved in terms of development and evidence may be wasted because maintaining the service or implementation elsewhere is unaffordable.

The Department of Education has also commissioned a 'What Works Centre' for children's social care, referred to in Chapter 2. The WWC-CSC states that it aims to seek 'better outcomes for children, young people and families by bringing the best available evidence to practitioners and other decision makers across the children's social care sector.' It will do this by synthesising evidence and making it accessible to practitioners, policy makers and practice leaders. The WWC-CSC represents the embodiment of evidence-based social work but social workers' and carers' skills will remain central to improving children's outcomes.

### *Regional Adoption Agencies (RAAs)*

In 2015, the Westminster government announced its policy to regionalise adoption services in England with the aim of improving adopter recruitment, speeding up matching so as to improve children's outcomes and reducing costs, through economies of scale. The aim was to create between 25 and 30 RAAs each of which could make at least 200 placements a

year. All local authorities would be part of a regional agency but its structure, including relationships with Voluntary Adoption Agencies, and geographical extent would be a matter for them (DfE 2015f). The Department for Education published the first stage of a three year evaluation in July 2019 (Blades et al 2019). It was considered too early to assess whether RAAs had improved the overall organisation and delivery of adoption services, but those working in more established RAAs perceived that a larger pool of adopters had been created, there was speedier and better matching, and improvements to adoption support. However, the initial evaluation also painted a picture of ‘frustration and challenge’ (Blades et al 2019: 62); many problems associated with the different historic arrangements remained a year later, particularly with IT systems, and not all staff accepted the changes RAAs had made for them. Whilst the decline in placement orders (and therefore adoptions) made reforming adoption services essential, the difficulties of establishing RAAs may initially have made it harder to find adopters and make placements. The number of placement orders continues to fall; in March 2018 there were 5,360 children in England in care and subject to placement orders (DfE annual).

### **13.5 Conclusion and summary**

This chapter has reviewed changes in the social work and court landscapes since 2015, when we finished collecting our S2 cases. It has highlighted the continuation of austerity politics, with the cuts to local authority and other public services budgets, and the direct impact on vulnerable families. It has looked at the ongoing tensions between the courts and local authorities, exemplified in the debates about the causes of, and how to deal with, the high number of care proceedings, the use of s.20, and special guardianship assessments and support. These tensions lie behind the establishment of the Care Crisis Review and the Public Law Working Group, and are reflected in their recommendations. The chapter also summarised progress in improving data on family justice and developments in the collection and analysis of administrative data for children’s social care, the measurement of children’s outcomes and the impact of the DfE children’s social care innovation programme.

In all these matters there are clear links with what has gone before, as discussed in Chapters 2 and 4, such as the longstanding debates about the balances between family support and child protection, the impact of poverty on children’s lives and the challenges for social work to take account of it but to keep a focus on the welfare of the children. Other perennial themes are the tensions between the courts and local authorities, between central and local government, procedures and flexibility, the control of social work practice, and the costs and benefits of data collection and analysis.

One of the challenges for any sort of reform or innovation in public sector fields such as children’s social care and court proceedings, is that such services tend to have numerous, and not always compatible goals – notably of course, to support families and protect children, but also to provide support whilst promoting individual and family responsibility, to give time for change whilst not letting cases drift, to offer high quality services whilst keeping costs down, to be responsive to individual circumstances whilst having procedures to ensure fairness for all, to have stable organisations without having closed cultures, to

allow room for meeting local needs without creating a 'postcode lottery'. These are inevitable and ultimately insolvable dilemmas, which take in far more than just the specific service itself – for example, a goal to reduce the number of care proceedings, or the duration of care proceedings, will have implications for a huge range of services. Given this impossibility and complexity, of course the issues come back again and again, as this chapter has shown, in slightly different forms but essentially the same questions. The success or otherwise of the 26 week rule touches on all of them. It is a key to a door that opens up a whole range of policy, practice and ultimately ethical questions – what is the best way to help children whose welfare is at risk of significant harm?

## Chapter 14 Discussion and recommendations

### 14.1 Introduction

This final chapter links the research findings with the theoretical debates for a discussion of contemporary challenges and tensions about the use of care proceedings, children's outcomes and improvements to and use of data in family justice. At the heart of these discussions are concerns about the overlapping and conflictual relationship between courts and local authorities in pursuit of better outcomes for children. This relationship was described as verging on the dysfunctional by the Family Justice Review of 2011 (FJR 2011b: 101) and developments since then, as discussed in Chapters 2 and 13, seem to have done little to alleviate that. The mistrust reflects and embodies wider debates about the relationships between law and welfare (see Chapter 4), and some differences of perspective are both necessary and inevitable; but reviewing the recent debates about the use of care proceedings and s.20 particularly, it appears that aspects of the most disputed cases have percolated into legal views about social work practice without being grounded in accurate understandings, and sometimes to the detriment of decisions for children.

Reforms, particularly where they are as radical as the PLO, necessarily require individual change as well as system change, and this was reflected in the Study findings. Care proceedings were made shorter, although with considerable variation between areas (Chapter 7), and changed in other ways too, particularly in the different pattern of orders made by the courts (Chapter 9). The implications for children then are uneven and uncertain (the court process and outcomes for some might be very different from what they would have been before the reforms). Whilst change may bring different professions together as they appeared to do when the Children Act was implemented, they can also exacerbate conflict, and this seems to have happened with the PLO.

The *Outcomes for Children Study* provided the opportunity to explore existing data sources to establish what they could show about children's outcomes and to examine how over 600 children fared one and five years after their care proceedings had ended. Whilst the data was limited, it provided a new window on the consequences of care proceedings; and examining case files identified factors which could contribute to more positive outcomes. Beliefs about the outcomes for children of care proceedings have not been based on systematic collection of information about what happened to the children after orders were made, but rather on anecdote, chance encounters and the much-publicised shortcomings of the care system (even if these are not always fair: see Chapter 4). Good outcomes for children require both justice and welfare, that these separate systems work together and are resourced to meet their responsibilities. Considerable efforts are needed to build or rebuild a more co-operative and respectful system, which has a shared understanding, based on evidence and values, of what counts as good outcomes for children, and the subtleties of this.

The discussion and recommendations challenge policy makers and practitioners in law and social work to make use of these findings to improve decision-making in courts and local authorities so that children subject to care proceedings are supported to achieve good outcomes.

## **14.2 The use of care proceedings**

Current concerns of too many care cases, delayed applications and the (mis)use of s.20 (see sections 2.2 and 13.2) together with the findings on local authority and court decision-making, the orders made and their effects provide the context for considering the decisions to bring proceedings and how cases where children are suffering or at risk of significant harm can be managed safely and in ways with the potential to improve children's lives.

The pre-proceedings process is effective at diverting cases from care proceedings in the short-term in between a third and a quarter of cases (Masson et al 2013; see also, Broadhurst et al 2013); and three-quarters of diverted cases did not enter care proceedings in the following 5 years (see Chapter 6) but many of the children continued to need support as children in need, in need of protection, were looked after under s.20 or moved within their family to other carers (see figure 6.1). There are parallels between the finding that a substantial minority entered proceedings more than a year after the process was completed and what happened to children who entered proceedings but left with a supervision order; in S2, children leaving with SOs accounted for 20% of the sample (25.5% if those exiting with CAOs to parents are included) and almost a quarter were the subjects of further care proceedings within two years of the final order (see section 10.6 and Harwin et al 2019a). Also, over 40% of children who ended care proceedings with a SO were not looked after in connection with the proceedings (see section 8.4); like most of the 'pre-proceedings only' children they had remained at home. This pattern of practice raises questions about the use of pre-proceedings and care proceedings, particularly whether and when to shift from the formal pre-proceedings process into care proceedings, and how to make social work before and after care proceedings more effective in achieving lasting improvements in the care of children on the edge of care.

*Could care proceedings be avoided by keeping cases in the formal pre-proceedings process?*

The letter before proceedings was seen by many parents as 'a wake-up call', a signal that the local authority's concerns are serious and the need to make changes. Proceedings were brought where parents failed to engage with the process, did not comply with (or 'breached') the written agreement they had made and withdrew from services provided with the aim of supporting their parenting or avoiding proceedings, and sometimes this happened repeatedly before proceedings were brought (Masson et al 2013 and section 5.2). It is a matter of judgment for social work managers when to step-up from the pre-proceedings process; the matters to be considered include not only case factors but service expectations and the attitudes of the court. The case factors include what work has been done with the parents and for how long; the risks to the child; and what the care

proceedings are intended to achieve. Service expectations relate to how the case and the social work provided compare with other cases and expectations for child protection services; the attitudes of the court to how cases should be managed and when they should be brought to court are influential, particularly where local judges are ready critics. The length of time a case is worked before proceedings are brought does not, of itself signify 'delay'. Whilst the Children Act, Volume 1 Guidance (DfE 2014d) emphasises the need for having clear timescales and sharing these with the family it does not set a time limit for pre-proceedings work. There are cases where further efforts or repeated attempts after an initial lack of success in engaging parents can improve children's care and avoid care proceedings, but it is challenging to identify realistically when and where progress will be made. More and some longer use of pre-proceedings could contribute to the reduction of care proceedings but social workers will need support from managers to continue to take these risks, and managers and local authorities also need to be supported to do this by Ofsted/ Care Inspectorate Wales and the courts. Distinctions can and should be made between purposeful (but ultimately unsuccessful) social work over time, applications postponed for good reasons (such as enabling a parent who is ill or absent overseas to participate), and drift or delay.

*Do care proceedings serve a purpose where children remain with their parents throughout the proceedings and end with a SO?*

The majority of proceedings ending with a SO were successful in that there were no further care proceedings for the children concerned and they were not later subject to child protection plans, pre-proceedings or care proceedings. The local authority had considered that children were suffering, or at risk of significant harm, the parents had not engaged sufficiently or consistently with the pre-proceedings process and, consequently, the local authority had decided it was necessary to resort to care proceedings. However, parents' change in approach in the proceedings convinced the court, the children's guardian (and usually the local authority) that the children would be adequately protected with only a SO. These judgements were not always right, as evidenced by the failed SOs, but where they were they raise the question whether the proceedings were necessary, or whether a similar outcome could have been achieved through more effective use of pre-proceedings (see above). Of course, the court process with the authority of the judge may have made some difference for some parents (as found in the FDAC evaluation, Harwin et al 2014). For others, encouragement from their lawyer may have been the catalyst and this might be achieved in pre-proceedings by lawyers spending more time (and receiving more funding) supporting parents to engage with the services which could help them to make and sustain changes.

*Can local authorities avoid bringing care proceedings where children remain with their parents throughout the proceedings and end with a SO?*

A SO was the most common outcome for children at home during care proceedings (see section 8.4). Cases where the children had remained at home that ended with higher tariff orders (PO, CO or SGO) generally involved further incidents of harm during the proceedings.



In the majority of cases where children remained at home during care proceedings the local authority had sought an ICO with removal, but this had been refused in the face of opposition from the parents (and sometimes the children's guardian). If its care plan is based on obtaining a care order, then it is important that the local authority presents the court with sufficient evidence to obtain an ICO with removal, and its lawyers are prepared to argue the case; alternatively, where possible, this can be achieved if the child's entry to care is accepted by the parents. Good social work and independent legal advice can assist parents to understand and make such decisions. Where the local authority's legal advice suggests that the case for an ICO with removal is weak, continuing to manage the child's support and protection without care proceedings and seeking further evidence will avoid care proceedings which have only limited impact on the child's circumstances.

*How can the failure of SOs and the need for repeat care proceedings be avoided?*

Where protecting children requires further care proceedings children experience more adversity and further harm; the options for their permanent home become more limited because of their increased age and trauma. As well as avoiding such adverse effects and further trauma for parents, reducing the failure rate will save local authority expenditure and help reduce the number of care proceedings. Both courts and local authorities need to make changes if the number of supervision orders which fail is to be reduced.

Local authorities The (re)use of court proceedings reflects the difficulties in sustaining change, and thus the need for local authorities to undertake accurate assessments that identify likely difficulties in the future, planning ahead on how these might be met. It also requires local authorities and partner agencies to provide effective support during the care proceedings and the period of the SO, to give the best chance of sustainable change; and it needs services to be available after the SO has ended, and parents encouraged to continue to use them.

Courts In most cases, before bringing proceedings local authorities (and other services) have worked to improve parenting and only stepped up to the formal pre-proceedings process because these have failed. Only where they consider pre-proceedings work to be ineffective or insufficient do local authorities turn to court proceedings. The 'start again syndrome' (Brandon et al 2008) where new incidents of abuse or neglect are considered in isolation without reference to the history of the child's care or carers' actions, is acknowledged as leading to poor and dangerous practice by those working in child protection and has been a factor in Serious Case Reviews. In this context, parental co-operation *during* proceedings is not necessarily an adequate or reliable indicator of change. Where a SO has already failed, courts deciding care proceedings should fully review the parent's history of providing care and its consequences for the child before concluding that making another SO is a proportionate response.

- **Continuing purposeful social work within the pre-proceedings process may achieve as much in terms of protection from risk and improved care as bringing proceedings where children remain at home during the proceedings and become subject to supervision orders at their end.**

- Unless there is a good case for removal under an ICO or parents agree to the child being in care, the local authority cannot expect to obtain orders which allow for permanent out-of-home care or adoption at the end of care proceedings.
- Courts making final orders should consider the parents' history of engaging with services and maintaining improved care before concluding that a supervision order is a proportionate response, particularly where a supervision order has been made for the child in the previous two years.

### 14.3 Care proceedings under the PLO 2014

The PLO succeeded in reducing the duration of care proceedings, and this had clear benefits for children, parents and local authorities. Children spent less time waiting for plans for their care to be confirmed and implemented, and those with adoption plans were younger when they were placed for adoption; parents spent less time caught up in legal proceedings and those whose children were re-unified achieved this more quickly; and local authorities used fewer of their resources on caring for children who were re-unified or moved to the care of relatives under SGOs (or CAOs). Reducing care proceedings from the average of 55 weeks to 26 weeks meant local authorities provided 200 fewer days of foster care for every child who left care at the end of proceedings, approximately a third of those subject to care proceedings (see table 8.1). Longer cases also used more court resources. There were also disadvantages: some decisions were rushed; adequate time was not allowed for many assessments of kin carers, who were only identified or put forward during proceedings and a third of children who moved to relatives under an SGO did so without any period in their relative's care before the order was made (see section 7.4). Parents had less opportunity to make changes *during* proceedings but nor was their ability to sustain such changes tested for as long as it had been when proceedings lasted a year or more. This may have been a factor in the breakdown of arrangements where proceedings ended with SOs (see section 10.6). However, the pattern of orders did not suggest that the reforms had made it less likely that parents would retain or regain care of their children (see table 9.1). Rather the courts were more willing to find that a SO was a proportionate response to significant harm than previously.

Whilst shorter proceedings were the aim of the PLO and reduced costs for local authorities, Cafcass/ Cafcass Cymru, the courts and the Legal Aid Agency, they may also have led to some children returning home too soon, before parents had really had time to make the necessary changes to their parenting. Premature return has been associated with placement breakdown (Farmer and Lutman 2012). The Study noted a high rate of return to court in both samples where SOs had been made. The data do not allow us to conclude that breakdowns in this study were associated with the length of time children spent away from their parents or the length of proceedings; breakdown of SOs was more common where children remained at home throughout the proceedings but this did not reach statistical significance ( $p=0.06$ ). Rather than extend proceedings generally, a possible response could be greater use of care orders with a plan for reunification. Such orders were found in

previous studies (Hunt and Macleod 1999; Harwin et al 2003) but not in this Study. In those studies, however, these orders were found to have the highest rates of non-implementation, suggesting as with our observations about SOs (and see Harwin et al 2019) possible over-optimism in the assessment, planning and decision-making which produced them. This means that any change of policy aimed at greater use of care orders with home placement or plans for re-unification, instead of supervision orders, should only be introduced following further research and consultation.

*Is there more room for improvement in the timeliness of court decisions?*

Not all Areas were equally successful in reducing case duration, and the average case duration has increased nationally since 2017, now standing at 33 weeks, more than 25% longer than the time limit provided by legislation. Factors identified in the study as associated with timely case completion included effective use of the IRH and appointing no more than one expert in the proceedings; cases with judicial continuity were also shorter on average but the difference was not statistically significant – some cases with one judge took a long time and others with two judges were managed to a timely conclusion (see section 7.5).

Continued work to secure effective use of the IRH (including listing practices and judicial training) are required to raise practice in all courts to the standards of the best. This, rather than settlement conferences, can reduce the resources required to complete cases, fairly. Whilst some cases will require a final hearing, more consideration should be given to: achieving judicial continuity which allows parents to be confident that the judge knows the case; judges informing parents, before the IRH, that cases can be decided without substantive oral evidence where the evidence is compelling and the outcome inevitable; considering whether any outstanding issues really justify the expense of a further hearing; improving knowledge about court practice through data, which is discussed below. Judicial continuity is not practised in all courts, nor routinely where cases are heard by High Court judges. The willingness to appoint experts was another area where courts were not consistent. Interviews identified further matters, and inconsistency was openly acknowledged by some judges who participated in the focus groups. Effective case management requires judges conversant with the court bundle; judicial continuity saves judicial time and has the potential to improve consistency and to increase accountability and confidence in judicial decisions.

*Should some types of case have longer court proceedings?*

There was no doubt that the 26 week timetable constrained practice and that some relaxation would be welcomed by many of the professionals involved with proceedings. A general relaxation, or broad categories of case where a longer time limit is set, or the need for extensions more readily recognised, risks a return to the lengthy proceedings which occurred before the reforms and less priority being given to children's need for timely decisions. Extended timetables will also lead to cases requiring more resources, from both courts and local authorities, although they might save resources in the longer term, if decisions are more enduring; either way, they add to the pressures already felt due to the

increase in cases. Clarity about the reasons for a different timetable, what it is intended to achieve (and for whom) and how else these advantages might be achieved are essential before a relaxation in the PLO timetable.

- **Timely decisions in care proceedings makes substantial demands on practitioners including judges but are largely positive for children, parents, local authorities and courts. Effective use of the IRH is crucial, changes to listing practices, judicial training and control of expert appointments are required to achieve this.**
- **Proposals to extend the timetable (other than for individual cases) require clarity about what this aims to achieve.**

#### **14.4 Care proceedings and s.20**

The focus here is on s.20 in the context of care proceedings; the study explored the inter-relationship of s.20 and care proceedings, which is not possible in the DfE datasets and has not previously been attempted. The study did not examine the use of s.20 without care proceedings except in connection with the pre-proceedings process. Judges only see s.20 where it has been used in cases that come before them and lawyers highlight it as an issue. Comments in decided cases make it clear that judges hearing care proceedings are not well-informed about s.20 more generally. This underlines the need for the judiciary to have a better understanding of local authority social work, and for data on family justice not to be limited to court service or Cafcass data, but include data on key aspects of children's social care (see below 14.6).

Accommodation under s.20 is an integral part of the work local authorities do to support families, protect children and divert cases from care proceedings. Using s.20 reflects the no order principle, maintaining the balance, intended in the Children Act, between the local authority and the court, and between the state and the family, discussed in Chapter 4. It can also play a part in the work of preparing for care proceedings, and as this study has highlighted, in the process of proceedings. Within a child protection context, considering s.20 can never simply be provision of family support.

In both samples of cases in the Study, s.20 arrangements supported families dealing with crises, when they could not realistically provide adequate care for their children, including when a parent was mentally ill and/ or receiving residential treatment etc. It meant parents retained full parental responsibility although aspects of children's day to day care were delegated to the local authority or foster carers, and parents did not have to cope simultaneously with the substantial stresses of court proceedings. Children were supported by a social worker in what was necessarily a crisis time for them, even where they were in the care of someone they knew. Local authority social workers were able to consider alternatives for children, knowing they were protected, and to complete assessments for care proceedings where this was the most appropriate way forward, something which was often unclear initially. This avoided a rush to court for an EPO or ICO, leaving courts to accommodate fewer emergency, short notice and out of hours applications, and hearings

for extensions of strictly time-limited EPOs. Applications for EPOs resulted in s.20 arrangements in some cases when legally represented parents were encouraged to propose or accept these at court. Unless the local authority had good reasons for objecting such as previous threats to social workers or carers, it accepted care under s.20 instead of an order.

Concerns about misuse of s.20 (see 13.2, above) have been a lightning rod in the lack of trust between courts and local authorities with local authorities accused of seeking to control parents by threatening court action if they do not agree to s.20, not informing parents of their right to withdraw their child from s.20 and then avoiding court scrutiny by delaying an application to court. This assumes that local authorities seek to separate parents and children without reason and over-simplifies the location of power at the edge of care proceedings within the family, local authority and court triad (see Chapter 4, above). Power is distributed unequally between these three, and in ways that shift over time (discussed below).

#### *The need for independent legal advice where s.20 is offered*

The Family Rights Group (Lynch 2017), Care Crisis Review (FRG 2018) and the Public Law Working Group (PLWG 2019) have all recommended the provision of independent legal advice where s.20 is used. At present such advice is only freely available where s.20 arrangements are made within the formal pre-proceedings system or during care proceedings. Parents clearly need a good understanding of their rights and the effects of s.20, and this should be delivered by all social workers practising ethically. It is also important that discussions between parents and social workers are not constructed as necessarily conflictual, requiring legal representation for parents in the same way as formal police interviews. Accepting that legal advice is needed routinely would raise confidence in the use of s.20 amongst lawyers and the judiciary but it could make it more difficult to build trust and establish partnership working between parents and social workers, both in relation to provision of accommodation and other services. There is also the possibility that short-term arrangements for children to be looked after would be escalated into court proceedings with the negative impact on parents and children, and further demands on resources.

Apart from these concerns, a study of care proceedings, where all parents have access to non-means, non-merit tested legal representation does not provide a firm foundation for making recommendations which will necessarily relate to the use of s.20 where there are no care proceedings. Not only are there questions about when independent advice would be provided, there is also the issue of the qualifications of those tasked with providing it. Police station advice is often provided by paralegals rather than solicitors, but they must have received accredited training. An understanding of social work services, and alternative sources of support and how to access these may be more important for independent advisers to parents in crisis than detailed knowledge of child care law. Further empirical research on how s.20 is used and in what circumstances would provide a foundation for deciding how, when and by whom advice should be provided alongside s.20.

#### *How do s.20 and care proceedings interrelate?*

Although the initial decision to accommodate a child under s.20 outside care proceedings is made between the local authority and the parents, the court has power even then, because its decisions set the standard against which the discussion with parents about the use of s.20 takes place; this is a classic example of 'bargaining in the shadow of the law' (Mnookin and Kornhauser 1979) where resort to court is potentially disadvantageous to both parties. Once proceedings have started, power shifts more overtly to the court. A court application temporarily increases the court's power leaving the family further constrained by the order. Neither parents nor local authorities are free to refuse the suggestion that a court application for an EPO or ICO should be resolved by a s.20 arrangement, particularly at the start of the proceedings. Once the agreement is made, it remains in place unless either the local authority seeks to restrict parental responsibility and applies for an ICO, or decides that the child should return home. (In this respect it reflects the current position where ICOs are no longer automatically subject to court review every 4 weeks.) Even the decision to reunify cannot be seen straightforwardly as empowering – parents risk being seen as both uncooperative and uncaring unless they agree.

After care proceedings have ended, s.20 is used to manage transitions for children whose return home or placement with relatives was decided only at the end of proceedings. This allows the competing priorities of completing cases without delay and preparing children and kin carers to live together after the proceedings to be managed. Without some period of transition, the success of the final order is undermined: new carers may feel (or be) overwhelmed and children traumatised by a lack of preparation. Alternatives do not exist which allow the court to remain involved and the child to be placed permanently with new carers, nor to test placements with them unless they can be approved as reg 24 carers. Extending the proceedings and making an ICAO before the final order is a possibility but lacks the flexibility of using s.20. Whilst courts and lawyers have expressed concern about the use of s.20 before care proceedings they have seemingly been untroubled by its impact during proceedings and after their end. However, its use at each of these times is equally problematic, raising questions about the court's power, the genuineness of parental consent, and whether the children or the courts are the main beneficiaries.

#### *What does revaluing s.20 mean for child protection?*

Both the Chief Social Worker and the Public Law Working Group (PLWG) (see 13.2, above) want to revalue s.20, and a more restrictive approach to care proceedings is likely to drive increased resort to s.20, not only because of increased need to support families but because local authorities' ability to use the courts would be reduced. However, the courts may be unwilling to release the power they have claimed through criticism of local authorities; indeed the suggestion for more guidance (to tell local authorities how they should decide when to bring care proceedings and when they should use s.20, PLWG 2019) suggests this.

Revaluing s.20 necessitates starting from a position which does not assume that local authorities must be subject to close scrutiny by the courts outside proceedings and recognising the ways s.20 assists both families and the courts. It also requires courts to

respect the boundaries between their responsibilities to decide care proceedings and those of others tasked with maintaining good practice in social work.

- **Judges need a better understanding of local authority work in children's social care, and about how this interacts with their role hearing care proceedings. The Judicial College should develop a programme which provides a better introduction to the local authority processes and social work approaches to protecting children and supporting families.**
- **Revaluing s.20 will not be achieved through aggressive criticism of local authority decision-making outside the court arena, nor by further prescriptive guidance on its use. Rather it requires respect for the division of responsibilities between courts, local authorities, children's guardians and IROs, recognition of its benefits and a commitment to resolving disagreements through discussion.**

#### **14.5 Support after care proceedings**

Care proceedings operate as an interchange in pathways to protection for children who enter the process because they are suffering, or at risk of, abuse or neglect. While the court process is under way they are cared for in a range of different placements, with parents, kin, unrelated foster carers and residential care under various different legal frameworks. When proceedings complete, they become subject to a new legal order, some change placement and others remain with the people who had been caring for them. This research identified and quantified, for the first time, a substantial number of children subject to care proceedings who never enter the care system. Overall 20% of children in care proceedings were not in care; the proportion was higher for S2 than S1. These children have experienced similar trauma to the ones taken into care, but the decision has been to leave them with their parent(s) or a member of their wider family.

*What changes are needed in the framework for supporting carers after care proceedings?*

In terms of services, the routes children take through care proceedings (entering care or not) and the final orders granted determine their eligibility for support and local authority's duties to them. Whilst the distinction between children cared for by parents and others might be considered to justify lower levels of support after the proceedings, on the basis that parents are responsible for their children and care proceedings should not create new rights for support (except for participating in the proceedings), distinctions between other children cared for outside the care system related to their current or past legal status are irrational and unjustifiable. They also breach the equality provision of the UNCRC. For example, children on SGOs who have never entered care do not meet the eligibility conditions for the Adoption Support Fund, which despite its name is now also open to those in special guardianship, but only if they were previously looked after (APPGP 2019). Similarly, Pupil Premium, which provides additional funds for schools is only paid in relation to children subject to SGOs where they were previously in care but is extended to the poorest if they qualify for free school meals. Also grants towards university fees are only

available where the young person was in care before the SGO. The Special Guardianship Regulations (2005 SI 1109) also make some distinctions between children who do and do not leave care when the SGO is made (regs 13(4)(5)).

Special guardians are eligible for the same state benefits as parents, which mean that they are also the targets of the limits on benefits imposed through austerity (see 4.1 and 13.1). Whilst SGO carers who are both over pension age are not subject to the benefit cap or bedroom tax they are also ineligible for free child care for pre-school children or older disabled children, where there are work/ earnings conditions. Local authorities also have powers and duties to support in connection with special guardianship. They must assess support needs where the child was formerly looked after (s.14F and reg 11(1)(a)) but only have a discretion to do so if they were not. Also, they should inform carers of their entitlements and take these into account when fixing payments, and thus must compensate for the restrictions in national benefits. Overall, the system has such complexity that it is impossible for individuals to know whether they are receiving the 'right amounts.' What these are and what proportion the local authority should pay has very little to do with carers' or children's needs. The support system for kin carers is designed to limit expenditure and divide the cost between central and local government.

- **Where SGOs are made in care proceedings, distinguishing between children according to whether or not they were looked after before the order was made is indefensible.**
- **The current system for financial support for kin carers is not fit for purpose. It is too complex, and risks leaving children and their carers in poverty.**

## **14.6 Understanding outcomes**

This section addresses three questions about the relationship between care proceedings and longer-term outcomes, drawing on the findings of the study and the discussion in Chapter 4 about the complexities of assessing and achieving good outcomes for children. As we observed in Chapter 4, it is important to trace what happens to children who have been the subject of care proceedings, given the profound, life-changing nature of this intervention, and the huge emotional and financial costs it involves; but a better informed and more nuanced approach to outcomes is essential.

*Can longer-term outcomes be predicted, and what are the implications of the answer for care proceedings?*

The study shows that the longer term outcomes of care proceedings are both predictable and not predictable. That is to say, it can be predicted that, over time, about a third of the cases that conclude with the children in parental care under supervision orders will end up with further care proceedings, noting that the pace has increased since the 2013-14 changes, so the likelihood may now be greater than that; but it cannot as easily be predicted which ones. It can be predicted that older children in care will have more moves than younger ones, but again, it is not simple to say who will have many moves and who will have



few; and whilst stability is generally good for children, it cannot be guaranteed that any particular placement (including with parents or kin), however stable, is good for the child's wellbeing.

It can be predicted that local authorities will genuinely try to implement the care plan, and if it is for a move to a new placement with parents or kin, it will be implemented within a short time of the proceedings ending. If the plan is for adoption, it is highly likely to be implemented for younger children, and more swiftly now than before the 26 week changes. If the child is older, and/or if they are placed with siblings, there is an increased likelihood that the plan will not be implemented, but this could be because an alternative plan, such as long-term care with the current carers and/or the sibling(s) become viable. But again, it is hard to predict which particular cases, and the challenges of deciding whether to place siblings together or apart, and how this affects the longer-term plan for one or both of them, were notably significant. If the long-term plan is special guardianship, it can be predicted that the carers will have challenges managing the child's behaviour as he/she grows up, managing family links and managing finances; but again, it is not so easy to predict how well they will manage these. And if the plan is long-term public care, then it can be predicted that there will be difficulties as the young person goes through adolescence, in terms of behaviour, placement stability and family contact, and challenges around growing into independence; but the overall picture is one of good achievement despite the challenges, thanks often to dedicated carers.

The implications of this nuanced picture for care proceedings are two-fold. First, in practical terms, there has to be an emphasis on thorough assessments and decision-making that looks not only at the past, at what has happened in the family and to the child, but looks ahead, at what that is likely to mean for the child's needs and behaviour in the future, and the needs of the carers (foster carers, kin or parents) – and then makes realistic decisions based on that, and plans services accordingly. Second, in more conceptual terms, there has to be more open recognition that outcomes cannot be guaranteed, however well-intentioned the plan; so much else comes into play. Skilful social work can play a part in improving the chances of good outcomes, but these hang on many other contributions – the actions of carers, the services of other agencies, the attitudes of the families, the wishes and abilities of the young person, and sometimes, as we discussed, chance. A more subtle awareness from the courts, policy makers and politicians is required, of the limits of what can be planned for and controlled, and an appreciation of the boundaries between the different parties (courts, local authorities, central government, families, young people), their different powers, responsibilities and constraints.

*Are court decisions 'right' or 'wrong' according to the longer term outcomes?*

In light of the preceding discussion, the answer to this question will depend on the individual circumstances of each case, in particular how the balance between two very different sets of principles is seen to have been met in the court's decision. On the one hand, court decisions are made on the basis of the evidence presented at the time; subsequent events do not affect that decision, even if they make one wish that a different

order had been made. On the other hand, what happens in the future *is* relevant, because in care proceedings courts are required to look ahead, to consider ‘the current and future needs of the child’ and ‘the way in which the long-term plan for the upbringing of the child would meet those current and future needs’ (CA 1989 s.31(3B)(b)). But at the same time, a care order can only be made if the threshold conditions are satisfied and the order is ‘proportionate’; a court cannot decide a care case simply on the basis of the likely future wellbeing of the child.

If (say) a child went home at the end of proceedings and then re-entered care within a few months, it might be easy to conclude that the court had made the wrong decision, but it may be that all the parties agreed at the time, and the evidence at the time was that the parent(s) had made the necessary changes. Courts, local authorities and children’s guardians do need to be sharply aware of the dangers of things slipping back after the proceedings. Cases where supervision orders have been made previously should attract special attention in this regard, as discussed above, although the risks should be explicitly considered in all cases, in assessments, decision-making and plans for post-order support.

Nevertheless, the legal requirements and the wider social context make reunification (or indeed, non-separation) the first choice. So it may have been the right decision at the time – possibly the only decision that could have been made then. A more pertinent question is what happens next – now that there has been a relapse after proceedings, what account is taken of this in the new proceedings, if there is once again an apparent improvement; and what processes are there for wider learning, beyond the individual case. These are difficult decisions – the challenges of (say) leaving a violent partner, or controlling a drug addiction, are well known, and it is not unusual for people to have several attempts before they succeed. The question is how many attempts are to be allowed, while all the time the child is getting older and experiencing the multiple traumas of living in the harmful conditions, then being removed, then returned, and then removed.

It is also worth considering returns home which endure even though the child does not do well there, is poorly treated and unhappy, but there are no further care proceedings – was that the right decision or not? And it is worth noting that whatever option is taken – say the child goes into foster care, and does poorly – that does not necessarily mean that they would have done any better if they had gone home, or to kinship carers, or to adoption (Dickens et al 2019).

In practice, there does seem to be a realistic, or perhaps resigned, acceptance of this complexity amongst local authority staff. Very few blamed the courts for decisions even when they thought they were wrong, recognising the competing imperatives. But even so, a shared process for learning from controversial decisions could be beneficial, especially those made against the recommendation of the local authority, and/or where the child re-enters care proceedings or suffers further harm.

However, it may be hard to involve the courts in such a process. In the most grave cases, where children are killed or suffer serious harm, previous editions of the statutory *Working Together* guidance (HM Government 2006, 2010, 2013, 2015) required agencies to

contribute to a Serious Case Review (SCR). The position of the judiciary is that judges did not participate in these, on the grounds that it would be incompatible with their judicial independence (*President's Guidance on Judicial Cooperation with Serious Case Reviews*, Munby 2017; and see the criticism of this by Masson and Parton 2020). SCRs have been replaced with local and national Child Safeguarding Practice Reviews which should be undertaken to 'identify improvements to be made to safeguard and promote the welfare of children.' (p.81). Responsibility lies with the local 'safeguarding partners', the local authority, clinical commissioning group and the Chiefs of Police for the relevant area (Children Act 2004, s.16E) but there is no specific guidance about who should be involved in the new reviews. Respectful and reflective discussions between courts, local authorities and other agencies (and indeed others, such as private practice lawyers, families and carers) could open up much more productive routes to learning to help shed light on the thinking and decision-making processes in all of the bodies involved. Joint training events, seminars or local FJB meetings may also provide opportunities for developing mutual understanding.

*Should courts be informed about the longer-term outcomes?*

Judges have different views about whether or not it would be beneficial to learn about the results of their decisions; some say they would like to hear, others do not consider this would be helpful. These different views were reflected in our judicial focus groups and found by Masson (2015b). There are also concerns about the impact of dwelling on past decisions on judges' mental wellbeing. The distinction between what happens in individual cases (which may be unpredictable), and what happens in terms of wider patterns (which are predictable) is again a useful framework for considering differences of opinion and concerns.

Sometimes judges do hear about individual cases, if they come back to court – some may be successes (an adoption order being made, a care order being discharged because the child has been reunified with their parents), but it is more likely that the returns are cases that have not gone so well – placement breakdowns and re-entries to care. This risks giving judges a rather one-sided view of outcomes and the role of local authorities and other agencies in supporting placements. Judges are less likely to know about the successes, or about the wider patterns of outcomes.

Research into the outcomes of care proceedings can provide a 'frame of reference' (Masson, 2015b) to help judges interpret the evidence they hear in care cases – for example, about the chances of placements with parents breaking down, or of kinship carers facing great challenges in managing difficult family relationships. They could not tell judges how any particular family will do, but they could provide them with a framework for engaging with the parties, asking questions and assessing the quality of the assessments and the care plans. But as this study has shown, this still requires a degree of subtlety – as we have seen, trends can change over time, and trends do not guarantee what will happen in any individual case.

- **Accurately predicting the longer-term outcomes for individual children is impossible, but trends and patterns can be identified. Awareness of these from**

**judges, children's guardians and local authorities provides a useful frame of reference for assessing cases and making care plans that are attuned to the likely future needs of the children and their carers.**

- **Non-blaming and non-defensive discussions between judges, children's guardians, local authorities and other agencies can be an effective way for all to learn from cases that do not turn out well.**

#### **14.7 Improving outcomes**

Chapter 12 highlighted a range of messages for practice that came out of the case studies, for helping to improve longer-term outcomes for children after care proceedings. There were pointers for cases where the children were in parental care, kinship care and public care. A number of shared messages stand out. The first is about the importance of realistic appraisals of the history of the case and what that is likely to mean for the child's future wellbeing and the engagement of their parents and other kin. Another is about the importance of timely and effective services from all agencies; another about the benefits of sustained, skilful direct work with the children and their families; and about the importance of committed carers, and good support for them. All these things are crucial, but as discussed above, and in Chapter 4, there are no guarantees in any form of care, and inevitably, wherever they are placed, some children will suffer further harm, and some will have less happy childhoods than others. This is not to encourage defeatism or condone poor practice – there is much that can and should be done – but it does raise a pivotal question about the pressures for change and stability in the relationships between the courts, central government and local authorities.

Local authorities are expected to be continually improving, as shown by Ofsted inspections and the pressures to 'innovate' – even when their resources are constrained. However, there is also pressure to be consistent – for example, to explain why their numbers of children in care have gone up, or why their figures are so different from a neighbouring authority. Courts are generally expected to deliver consistency, although we can see the different patterns of outcomes of care proceedings across regions (Harwin et al 2018), and all lawyers are aware of differences between judges (see Chapters 4, and sections 7.3, 8.3 and 9.3). And, as this Study has found, there have been very big changes following the 2013-14 reforms, although not as a result of explicitly stated new aims (apart from reducing time), or new understandings about what could be achieved through care proceedings. The 26 week changes were meant to bring improvements in terms of timescale, but not to change the pattern of orders.

Child and family social work has been undermined by such pendulum swings over many years, as highlighted in Chapter 4, in the discussion about the child protection-family support dilemmas. Such lurching from one set of ideals to another, rather than trying to hold the balance between competing imperatives, risks that the wrong decisions will be taken because of the new expectations, in the courts or even before then, in the pattern of applications; but also that the services needed to make different approaches succeed, to

help improve the chances of 'good outcomes', will not have been developed or even that there is no power to provide them (e.g. support for SGO carers where children have not previously been in care; or that if SGO carers live in a different area, the local authority that brought the proceedings will no longer have responsibility after 3 years so their support plan cannot be guaranteed beyond that). This is another reason for dialogue between courts and local authorities about the limits of what can be expected in terms of future services, but it is also a basis for discussions with central government and special interest groups, about national provision. So, for example, in terms of specialist therapeutic support for children after care proceedings, the Adoption Support Fund goes some way towards this but arguably exists to make up for the shortage of suitable therapy from the NHS, and of course does not cover children in care or children living with their parents. The local authorities in our study had made their own provisions for this. What is needed is accessible therapeutic services for *all* children who need them, particularly for those who have been subject to state decisions in care proceedings.

In summary, there are powerful tensions between wanting stability and improvements, consistency and change, in both the court system and children's services. These have profound implications for mutual expectations. In terms of the outcomes for children, it is potentially dangerous if the courts believe that local authorities do not do things that they actually do (e.g. usually implement care plans, as this study and others have shown) or that they are able to do more than they actually can. Greater awareness of the patterns of outcomes (with the provisos noted above) could help to dispel some of the myths and misunderstandings. But most importantly, if society wants 'better long-term outcomes' for the children, then national government has to provide the resources to support that, to fund adequately local authorities and their partner agencies, not through short-lived, competitive and somewhat tokenistic innovation projects, but substantial and sustained increases in their core budgets for children and families.

- **Policymakers, agencies and courts need to appreciate that good outcomes for children cannot be guaranteed; but the chances are increased by realistic assessments that address what the history means for the likely future needs of the children and their families; timely and effective services from all agencies; sustained, skilful direct work with the children and families; and well-supported, committed carers.**
- **When planning reform in children's services and the courts, policymakers have to anticipate the likelihood of 'pendulum swings', and the dangers of change in one part of the system having unplanned consequences elsewhere.**
- **The core requirement to improve the outcomes for children, is for national government to substantially increase the funding for local authority child and family services, and their partner agencies.**

## 14.8 Improving data on family justice

Considerable strides are being made to improve data relating family justice. The developments led by the Ministry of Justice, linking court (FamilyMan), education (the National Pupil Database) and Cafcass (cms/ e-cms) (MoJ 2018b, c; Jay et al 2019), improvements in data for local authorities (DfE 2017c, 2019a; ADCS 2017) and the work of the Nuffield Family Justice Observatory (Broadhurst et al 2018b), discussed in sections 13.3 and 13.4, above, have increased the information available about orders made in Children Act proceedings and the children affected by them. It is now easier to see the broad context in which local authorities provide children's services and for local authority social work managers to monitor the use of services such as child protection plans and s.20 accommodation. Despite these developments there are no data which show how the use of children's services and care proceedings relate and interact, that could enable key findings of this study to be replicated for all local authorities in England and Wales.

*Why is it important for courts and local authorities to see how their decisions interrelate?*

Care proceedings are the most substantial state intervention in family life and frequently lead to life-changing decisions for children and families. Yet, in contrast to more limited interventions, such as s.47 assessments, child protection conferences and plans they are not recorded in any of the DfE administrative databases. Care proceedings are expensive for the state in terms of: providing courts and children's guardians; paying for the legal representation of parents and children; and local authority costs in preparing and making applications, and implementing the orders made. Central government expenditure in respect of care proceedings can be calculated but costs to local authorities are hidden within their provision for children in need and those looked after, social work and central (legal) services. This makes it impossible to understand what proportion of children's services expenditure is made in pursuit of compulsory measures and how changes in policy or practice impact on this. Care orders can only be made if a local authority brings care proceedings; court decisions are limited by local authority applications and plans, and local authority powers in child protection are limited by the court. As the discussions in Chapter 4 and sections 13.2, 14.2 and 14.3 above highlight, care proceedings are the site of conflict and distrust between courts and local authorities as well as of current concerns about service pressures. Better information about how such proceedings relate to other local authority services could be a step towards resolving these matters.

Although in individual cases the social work chronology should indicate the (recent) history of social work involvement with the family and the services provided, courts have no way of placing this information in the context of what other local authorities do generally and therefore what might be expected. Local authority lawyers and managers considering whether to bring care proceedings are likely to be better informed about their own local authority's actions but can only assume, on the basis of experience gained previously elsewhere, that they are making decisions comparable to those in other local authorities.

Linking data on children's services (CLA and CiN) and care proceedings as done in this project revealed: a very different leaving care curve for children subject to proceedings, with

a substantial proportion of children leaving care at the end of proceedings; that children who did not leave at the end of proceedings left on adoption or when they 'aged out'; the duration and pattern of use of s.20 before care proceedings; that for a significant proportion of children, s.20 (not ICOs) provided the basis for care during proceedings; and that a substantial proportion of children were not in care before, during or after their care proceedings. The data also showed that most care plans were implemented at the end of proceedings, what orders had been made for those that were not and that this long-term concern of judges could be established, routinely.

*How could these findings be achieved in national data?*

Department for Education Recording the use of care proceedings, the start and end dates of each s.31 application and the order made (or other ending) (the care proceedings variables) would allow use of care proceedings to be included in the Department for Education's analyses of services for children in need and children looked after (DfE 2018a-d). It would make it possible to analyse use of care proceedings with and without care, and use of care with or without care proceedings. Data on use of proceedings and orders made could also be included in the LAIT system (see DfE 2017c) allowing comparison between statistical neighbours and analysis as to whether the existing statistical neighbour comparisons also apply where courts are involved. In terms of the longitudinal analysis of children in need data (DfE 2019a) it would contribute to the understanding of how, why and when (in terms of service history) children move from being children in need/ in need of protection to looked after children.

The care proceedings variables could be included in the CiN data collection; all children subject to care proceedings come within the definition of children in need (s.17(10)) but not all are looked after, as this Study identified, making the CLA data collection (SSDA903 return) unsuitable for this. The Department for Education, rightly, has concerns about the added burden for local authorities of doing this. Although the researchers remain convinced that the advantages for local authorities outweigh the disadvantages, there are alternative ways to make visible the use of local authority services related to care proceedings, see 14.9, below.

Ministry of Justice Including further variables from the Department for Education's administrative databases in the Datashare (MoJ 2018 b, c, d; see 13.3 above) could make it possible to achieve a higher match-rate than is currently achieved with the NPD because it would allow a match before children are included in the education modules of that database. If the variables included being in need (open in CiN), being subject to a child protection plan, becoming looked after and ceasing to be looked after it would be possible to see how many/ what proportion of children subject to proceedings were in need, in need of protection and looked after before and during care proceedings, and what proportion of children remained in care at the end of the proceedings. This analysis would improve understanding of the use of care proceedings. It would also provide clear evidence about the length of children's services involvement before a care application is made and the 26 week 'clock' starts.

Including children's services variables in the Datashare would be more complex than an approach based on adding the care proceedings variables to the CiN databases, not least because being a child in need, in need of protection or looked after can vary over time, and in both directions. Unlike the proposal for adding care proceedings variables to the CiN, this approach would not allow comparisons for children subject to proceedings and those who are not, but it would allow the use of children's services for children subject to care proceedings to be compared with those for children in private law cases. If changes were also made to the CiN database or the C100 application form, specifically by recording the CiN identifier in the FamilyMan and Cafcass databases, the matching processes could be simplified.

A system for Wales Currently information on children in need in Wales is based on a periodic survey rather than use of database. Having comparable data for Wales is important; the same court system applies but there are indications that more use is made of care orders in Wales (MoJ 2018b). Children's services variables relating to looked after children in Wales could be included in the Datashare, or the CiN survey could be adapted to include the use of care proceedings. The Welsh Government's interest in children's outcomes should encourage it to consider how to improve its data relating to children's services.

Research databases Whilst the family justice databases available to researchers (Cafcass Cymru, Cafcass, the MoJ Datashare and DfE Administrative data) omit data either on care or on care proceedings, researchers need to be aware of the consequent limitations for understanding both the use of care proceedings and the provision of children's services to protect children – being in care proceedings is not the same as being in care. Whilst the Nuffield Family Justice Observatory (NFJO) is making Cafcass Cymru and Cafcass Data available through the SAIL Databank, really understanding these data, the influences on the use of family proceedings and the court's impact on other aspects of parents' and children's lives necessitates their linkage to data on children's services, health, income etc. Whilst the NFJO is just beginning, the value of data linkage identified by this project and other research (e.g. Sebba et al 2015; McGrath-Lone et al 2017) should encourage it to be ambitious.

- **Linking care proceedings and children's services data demonstrates how use of local authority services and use of care proceedings interact, and allows a deeper understanding of both.**
- **Both the Department for Education and the Ministry of Justice could enable this improved understanding by making changes to, respectively, the CiN data collection and the Ministry of Justice Datashare. Changes are also required in Welsh government data.**
- **The Nuffield Family Justice Observatory should build promoting data linkage into its development programme.**



## 14.9 Using data to establish and support practice within local authorities

The proposals in section 14.8 relate to changes by government/government departments and the NFJO.

*Is it possible for local authorities to do this now, without waiting for national changes?*

Individual local authorities can improve their understanding of their use of care proceedings using data they already hold. Local authority legal departments maintain spreadsheets on care proceedings, routinely including the dates of application and final hearing and the names of children involved; in some local authorities this information is held in a database, which is compatible with the one used by the children's services department to record contacts and services. The care proceedings variables can be extracted from the legal database (even where they are not held in a compatible database) and inserted into the children's services database. A project with North Yorkshire County Council (Masson et al 2019) established that this could be achieved but also noted that the order made was frequently not recorded in the legal department database and might need to be sourced from the child's social care file.

*How could adding care proceedings data assist decision-making in children's social care?*

If local authorities include the care proceedings variables in their social care database they can easily identify all the children with care proceedings and what actions had been taken before proceedings were issued. Also, recording the use of the pre-proceedings process will enable them to compare children/cases with and without the process, and where use of the process did not result in care proceedings. A review by managers of the range of services provided before care proceedings are issued, comparing these with services for other children in need of protection/diverted from proceedings, could inform future decisions about the use of proceedings (see section 14.2 above). Also, it could help to identify service demands for families on the edge of care proceedings and allow monitoring of the length of the pre-proceedings process before proceedings were issued or the processes ended.

Identifying children with proceedings, the date the proceedings ended and the order made would make it easier to track the services provided for children after orders are made. Services for children who have been subject to proceedings but are not looked after when they end are especially important for positive outcomes, as is service engagement (see sections 11.3, 11.4 and 12.3, above). The research found a substantial risk that arrangements will breakdown after a SO has expired (see figure 10.6), so being able to review continued contact with children's services may assist managers to reduce this risk, for example by keeping cases open with an allocated social worker. Carers have different needs where children are subject to SOs and where there is a SGO, so reviewing the patterns of service involvement by SGO carers can help to ensure that the local authority 'offer' is one which SGO carers are willing to take.

*Can data on proceedings help local authorities to monitor changes of policy and practice?*

Recording the data of care proceedings applications and orders makes it possible to examine cohorts of children subject to court action, and therefore to monitor or review groups of cases with care proceedings over a specific period. This is what was done in this Study to look at the effects of the PLO reforms on court proceedings and outcomes for children. There are many changes in children's services which are intended to impact on the use of care proceedings, particularly in the context of ever-increasing demand, for example the use of Panels to review decisions, the use of intensive family support or the introduction of projects like PAUSE (which supports mothers to avoid removal of further children). There are also changes which may impact on decisions in care proceedings without any explicit intention to do so, for example the appointment of a new DFJ or a new local authority legal team. Analysing cohorts of cases before and after changes have been introduced makes it possible to establish more clearly whether and what impacts on care proceedings the change has had. This is a stronger basis for reviewing reforms than the views of those involved, although these too are important in understanding the data.

Identifying cases completed during a specific period later (such as the same quarter in the previous year), and the children's placements and involvement with children's services 12 months later can also provide the basis for keeping the Local Family Justice Board and the court informed about later outcomes from proceedings (see section 14.6 above for further discussion of feedback to the courts). In this way it would be possible to provide information to family justice professionals (judges, children's guardians and lawyers) on the pattern of outcomes in terms of implementing care plans, leaving care, placement for adoption and information about service provision etc. Whilst this would not necessarily inform their decisions directly, it should increase confidence that the local authority knows about the children it makes subject to care proceedings and is able to monitor and support their needs after proceedings.

The PLATO tool already allows comparisons between local authorities within a DFJ area. Adding data about the use of s.20, children not in care during proceedings and children's outcomes after 1 year could provide the basis for discussions by managers and lawyers from the different local authorities, exploring differences despite common experiences of the court. This could reduce unwarranted differences between local authorities, although it might also entrench differences between DFJ areas or regions. For this reason, further work on comparisons is required, not just in terms of orders but also relating to children's outcomes.

- **Local authorities should consider including care proceedings variables in their own analysis of children's services and the provision of care. Where local authority data systems are being changed, legal departments should adopt the same system as used in children's social care.**
- **Patterns of service use comparing cases which enter proceedings and those that do not are valuable for informing service provision and the use of care proceedings. Analysing cohorts of cases based on the date of starting the pre-proceedings**

**process or care proceedings can be used to monitor the impact of policy or practice changes relating to care proceedings.**

- **Information on patterns of outcomes 1 year after orders were made can enhance family justice professionals' understanding of the effects of care proceedings, including their limitations, and demonstrate the local authority's involvement with children continues after the end of the proceedings.**

#### **14.10 Transparency in family justice**

Action to counter the view that the family courts dispense 'secret justice' has focused on opening the court to journalists (and legal bloggers) and encouraging the publication of legal judgments. These initiatives have had very limited success: cases are rarely reported in the mainstream media and may be badly misrepresented when they are, as in the notable 'Muslim foster carers' case involving Tower Hamlets in 2018 (Grierson 2018); very few judgments are published and very many judges never submit their family judgments for publication (Doughty et al 2017); the judgments that are published are not a random sample and cannot reflect the ordinary practice of courts or local authorities but are released because they make an interesting legal points, or (sometimes) to criticise the local authority (or experts) publicly. The main reservation expressed by family court judges about publishing is a fear that children will be identified despite anonymisation, an issue which has been identified by young people themselves (Brophy et al 2015). Judgments are mainly written with appeals in mind and not to communicate beyond lawyers, even to other family justice professionals; and their readership is tiny, not least because of their length and style. In sum, attempts to provide transparency through the media and the publication of judgments have created a limited and opaque picture, which does not assist understanding of court proceedings, and may well hinder it.

##### *How can data improve the transparency of family court proceedings?*

Despite the recent improvements, the data currently published on family court proceedings is very limited. Whilst orders can now be linked to applications, process information is limited to duration, and even there, without any data on the length of time between original applications and decisions on appeal where orders were challenged, or after rehearing where this was the result of the appeal. Judges do more than simply make orders; case management involves a series of decisions (see Chapter 7); the listing of cases is viewed by judges as a judicial matter and to the extent that different judges decide cases differently may be determinative. However, these aspects of court resolution are hidden by the absence of data. For example, the Study found wide differences between the sample courts in the operation of PLO procedures - in judicial continuity, the approval and refusal of expert appointments, the number of hearings per case and completion at an IRH. As discussed in Chapter 4, there are links between procedures and decisions; indeed, the justice of decisions is often held to lie not in the order granted being contrary to children's welfare but in the way the decision was made. If the family courts are to be made more transparent far more information about their operation must come into the public domain.

Data can provide only a partial account, and the picture presented depends on what data are used and how they are analysed. Consequently, moving from the current position towards making court proceedings more transparent with data will involve identifying the key information needed to increase transparency, how best this can be captured using data that are already collected (in FamilyMan or Cafcass e-cms), what additional data items are necessary to make sense of these and how these can be collected. This will necessarily be a matter for discussion with the judiciary and others with an interest in justice and transparency. Creating transparency with data will be a developmental process as it was for the CLA and CiN databases. The move towards digitisation in the family courts will create further opportunities to include information derived directly from applications, requiring further discussion about what should be included in a database, and for what purpose.

Court decision-making is complex, involving far more than the application of the law or the procedure rules to a set of facts but involving the interplay of facts, law, representation and the parties' willingness to pursue their case (as discussed in Chapter 4). This must be acknowledged if data are to clarify rather than obscure. At the very least it will be necessary to distinguish between cases where the threshold was contested and those where it was negotiated or agreed, and similarly for the care plan even though a contested/not opposed division does not capture the realities of resigned agreement. In terms of process, the length of the final hearing, whether this was continuous or not (and why) and whether the hearing took the time allotted, or more or less, and why will show how court resources are used, how this varies between courts and help ensure that resources are fairly distributed. Such information could help to ensure that a lack of resources does not contribute to delayed decision-making or added pressure to agree/concede.

Using data to show how the courts are working can encourage greater standardisation of process, both by making plain how cases are dealt with elsewhere and by encouraging discussion about the range of practice amongst professionals, including the judiciary. Data can also provide the basis of an account for parents and other parties of how child law operates, based on what is happening nationally rather than anecdotal accounts. This is particularly important in private law because beliefs about court proceedings and decisions are often based on misunderstandings and parties frequently lack access to a well-informed adviser or a lawyer. Although the point of transparency is to show how family justice is delivered it can also be expected to underline important messages for would-be court users: most (private law) cases settle and many care proceedings do too. Transparency by numbers carries few risks of identification, and these can be minimised by suppressing small numbers as is done with DfE data.

- **Improving data on court process can make family justice more transparent without risking identifying individuals.**

**Transparency by numbers can avoid the distortions arising from the selective publication of judgments, provide the basis for clear accounts of court practice and contribute to the reduction in unwarranted differences in process or outcome in different courts.**

- The insights from large numbers and broad patterns are further enhanced by in-depth, qualitative analysis of case records and practitioners' accounts of practice. Such a mixed methods approach, as used in this study, offers a nuanced picture of different experiences and perspectives, and insights into the positives and negatives of policy, practice and outcomes.

## Appendix 1: Comparability of Samples

Post-hoc tests for comparability of samples								
Variables in groups	N	S1	S2	Test	Value	Significance		
<b>All children</b>								
Gender	616			Pearson chi-square	0.414	NS		2 x 2 table
% girls		47.9	51.2					
Child Ethnicity	616			Pearson chi-square	0.258	NS		2 x 2 table
% White British		67.2	62.9					
Only child	616			Pearson chi-square	0.557	NS		2 x 2 table
% only child		16.9	18.7					
child age mths	616			Independent t-test	0.459	NS		Means
at ct application		62.13	65.61					
Child Phys disab	608			Pearson chi-square	0.185	NS		2 x 2 table
% disabled		4.5	2.5					
Child health con	608			Pearson chi-square	0.282	NS		2 x 2 table
% w condition		15.2	12.2					
C Learning Diffs	603			Pearson chi-square	0.015	significant		2 x 2 table
% w condition		24.9	16.9					
FAS	602			Pearson chi-square	0.039	significant		2 x 2 table

% w condition		5.9	2.5				
SEN	313			Pearson chi-square	0.583	NS	2 x 2 table
% w condition		29	26.2				
<b>Index child (IC)</b>							
Gender	373			Pearson chi-square	0.578	NS	2 x 2 table
% girls		45.9	48.8				
Child Ethnicity	373			Pearson chi-square	0.524	NS	2 x 2 table
% White British		62.4	59.1				
Only child	373			Pearson chi-square	0.796	NS	2 x 2 table
% only child		71.2	70				
<b>Parents</b>							
Birth M age in years	359						
Mean		29.96	29.58	t-test	0.666	NS	means
Birth F age in years	303						
Mean		34.98	33.99	t-test	0.409	NS	means
Birth F ID	368			Pearson chi-square	0.605	NS	2 x 2 table
%known		90.5	92				
<b>LA involvement</b>							
family known to SS	373			Pearson Chi-square	0.519	NS	2 x 2 table
%not known		6.5	4.9				

Length family known	363			Pearson Chi-square	0.208	NS	2 x 2 table
%6-12 months		2.5	7				
Active work before LPM	371			Pearson Chi-square	0.265	NS	2 x 2 table
%No		8.9	5.9				
length of active work LA5RR	348			Pearson Chi-square	0.034	Significant	2 x 2 table
under 12 months		53.8	65.1				
IC has CPP	367			Pearson Chi-square	0.164	NS	2 x 2 table
%currently registered		63.3	67.2				
never registered		27.8	20.2				
<b>Cases</b>							
previous proceedings	373			Pearson Chi square	0.583	NS	2 x 2 table
% yes		15.3	13.3				
N children in application	373			Pearson Chi square	0.44	NS	2 x 2 table
%1 only		57.6	65				
crisis application	373			Pearson Chi square	0.001		2 x 2 table
		27.1	12.8				



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